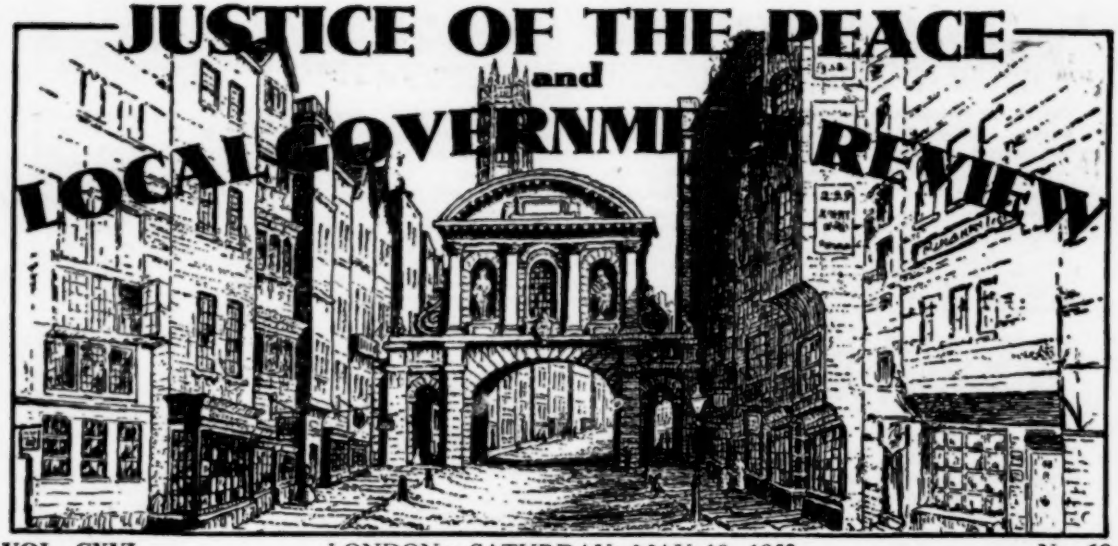

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, Police Officers and Social Workers are excepted from the provisions of the Order, as is employment in a managerial, professional, administrative or executive capacity.

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BOROUGH OF NUNEATON

APPLICATIONS are invited from Solicitors with considerable local government experience for the appointment of Deputy Town Clerk. Salary Grade X (£870 — £1,000).

The successful candidate will also be recommended for appointment as Superintendent Registrar.

Further particulars from the Town Clerk, Council House, Nuneaton, by whom applications must be received not later than May 24.

BOROUGH OF BEDDINGTON AND WALLINGTON

Town Clerk's Department

Legal Assistant (Unadmitted)

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. IV (£530—£575) plus London Weighting.

Previous local government service is not essential, but applicants should have considerable experience of conveyancing and general legal work.

Forms of application may be obtained from the undersigned, to whom they must be returned not later than Monday, May 19, 1952.

A. B. BATEMAN,
Town Clerk.

Town Hall,
Wallington.
May 2, 1952.

COUNTY BOROUGH OF CARLISLE

Assistant Solicitor

APPLICATIONS are invited for the above apointment. Salary within Grades Va/VII of the National Scale according to experience and qualifications. Local government experience is desirable but not essential.

The appointment is subject to (*a*) the Local Government Superannuation Act, 1937; (*b*) a medical examination ; (*c*) the National Conditions of Service.

Applications, with two testimonials, to be received by Monday, May 26.

Canvassing will disqualify.

H. D. A. ROBERTSON,
Town Clerk

Town Clerk's Office.
Carlisle.
May 1, 1952.

CITY OF CHICHESTER

Appointment of Legal and Committee Clerk

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade IV of the A.P.T. Division of the National Scales of Salaries (£530 × £15 — £575).

Applicants should have had previous experience in the office of a Solicitor or in the legal section of a Clerk's Department of a Local Authority and possess a good knowledge of conveyancing and general legal work. The duties will also include a limited amount of committee work, and applicants should be competent to prepare minutes and reports and to carry out the work arising therefrom.

The appointment will be terminable by one calendar month's written notice on either side and will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937 . The successful candidate will be required to pass a medical examination.

Relationship to any member or officer of the Council must be disclosed and canvassing directly or indirectly, will be a disqualification.

Further details of the appointment may be obtained from the undersigned, by whom applications, on the form provided, must be received by Saturday, May 24, 1952.

ERIC BANKS,
Town Clerk.

Greyfriars,
North Street, Chichester.
May 1, 1952.

HOLLYWOOD MANOR HOME FOR BOYS

APPLICATIONS are invited for the position of Assistant Warden for this Probation Home, taking thirty boys, 16-17-18. Salary £360, less £78 for board, etc. A joint appointment might be made of man and wife if the latter undertakes Assistant Matron's duties. Joint salary £515 less £148. Applications, stating age, qualifications and full particulars, enclosing copies of recent testimonials, to Secretary, Hollywood Manor, West Kingsdown, Sevenoaks.

BOROUGH OF HOVE

Appointment of Junior Assistant Solicitor

APPLICATIONS are invited for the post of Junior Assistant Solicitor at a salary in accordance with Grade VI of the National Salary Scales (Grade VII after two years' legal experience from admission).

Applicants must have a good knowledge of conveyancing and be prepared to undertake advocacy. Previous local government experience is not essential but will be an advantage.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications, experience, and the names of three referees must be delivered to me not later than May 26, 1952. Canvassing will disqualify.

JOHN E. STEVENS,
Town Clerk.

Town Hall, Hove.

CITY OF COVENTRY

Appointment of Third Assistant in Justices' Clerk's Office

APPLICATIONS are invited for the above mentioned full-time appointment from only those applicants who have a sound knowledge and general experience of the work of a justices' clerk's office, and are capable of acting as clerk of the court. Applications should detail the kind of work they have been doing.

The salary payable will be within the scale A.P.T. V (*a*) of the National Joint Council for Local Authorities (£600 × £20—£660 per annum). The successful candidate may be appointed to the maximum scale within the discretion of the justices. A local award is also payable if the officer is a member of a trade union which is recognized by the Trade Union Congress as an appropriate organization for local government officers (N.A.L.G.O. is such a trade union). The local award in Coventry is £26 per annum. The successful applicant will be required to pass a medical examination and to contribute to the Superannuation Fund and the Staff Widows and Orphans Pensions Fund. The appointment will be terminable by one month's notice on either side.

Applications, stating age, marital condition, present and past appointments, education, qualifications and full particulars of experience, together with copies of three recent testimonials, should be sent to the Clerk to the Justices, St. Mary's Hall, Coventry, by Saturday, May 31, 1952.

R. L. BARLOW,
Deputy Clerk to the City Justices.

St. Mary's Hall,
Coventry.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Condonation

A difficult question as to condonation, in which, although the three learned judges in the Court of Appeal were in agreement, one Lord Justice said that but for the existence of certain decisions he would have come to a different conclusion, was dealt with in *Perry* v. *Perry* [1952] 1 All E.R. 1076.

This was an appeal from the dismissal of a husband's petition by a Commissioner. The petition, which was undefended, was on the ground of desertion. The wife had, in fact, deserted her husband. After some few years had elapsed the husband began to visit his wife at fortnightly intervals and on several occasions intercourse took place. The husband was anxious for a reconciliation but his wife refused to come back to him, and he discontinued his visits to her. The wife became pregnant by him and a child was born. Although the learned Commissioner found that the wife had separated from her husband and her intention to desert had continued up to the time of the presentation of the petition and that the acts of intercourse had not altered her firm determination not to return to her husband, he felt bound to dismiss the petition by reason of the decision in *Viney* v. *Viney* [1951] 2 All E.R. 204; 115 J.P. 397.

In the course of his judgment the Master of the Rolls referred to observations of Lord Justice Denning in *Bartram* v. *Bartram* [1949] 2 All E.R. 270; 113 J.P. 422, that it was contrary to public policy that the deserted spouse desiring a resumption of cohabitation, should be embarrassed in efforts at reconciliation. It was for this reason that the doctrine of "condonation" could not properly be applicable to the offence of desertion before presentation of the petition. The Master of the Rolls emphasized the difference in this respect between the matrimonial offences of cruelty and adultery on the one hand and of desertion, where there is a right of reinstatement, on the other. The question whether cohabitation or marital relationship had or had not been resumed was one of fact and degree. Sexual intercourse was beyond doubt a most important incident in the relationship; but an act, or two or three acts, of intercourse without more could not, in his view, sensibly be regarded as necessarily determining the question; mutual intention in this matter was plainly essential. It did not seem unreasonable to hold that participation in one or two acts of intercourse by a husband or wife, who in all other respects repudiated the marital relationship, should not be regarded as necessarily constituting a resumption of such relationship. In the present case it appeared there had been no resumption of marital relationship. Mutual intention must be proved. The appeal would be allowed and the petitioner should have his decree. Lord Justice Hodson agreed. Lord Justice Jenkins said that he would have been disposed to regard intercourse as inconsistent with the continuance of a state of desertion, and to hold that the doctrine of condonation applied to desertion so as to make intercourse between the spouses an absolute bar to a decree. But having regard to the authorities, he also would allow the appeal.

Leading Questions

The Master of the Rolls had something to say on the subject of leading questions which should be taken to heart by anyone who is inclined to be at all lax in this matter. As is stated in *Phipson on Evidence*, 8th edn., at p. 460, leading questions must not be asked in the examination or re-examination of a witness, but as the rule is merely intended to prevent the examination from being conducted unfairly the judge has a discretion, which is not open to review, to relax it whenever he considers it necessary in the interests of justice. As in many other respects, the rule is observed more strictly in criminal than in civil cases, but occasionally, when both parties are legally represented and are in agreement on the point, it may be proper for a magistrates' court to allow leading questions as to undisputed matters. Care should be taken, however, not to allow too much relaxation of the rule.

Perry v. *Perry*, *supra*, was an undefended case, but the Master of the Rolls commented upon the form of the questions put to the petitioner by counsel during his examination-in-chief. It consisted, said the master of the Rolls, from first to last of a series of questions put (without any comment or objection by the commissioner) in a form so leading as might fairly be said to have deprived the answers (which consisted substantially of the word "Yes" varied by the phrase, "That is right") of any cogency whatever. He (his Lordship) wished counsel and judges—particularly in cases where the petitions were undefended—to know that, when all allowance had been made for the nervousness of witnesses, this form of questioning was not only undesirable but wrong, and was liable to disable any judgment founded on evidence so given.

While leading questions are permitted in cross-examination, there are limits. We quote from *Phipson* at p. 468: "Though leading questions may be put in cross-examination, whether the witness be favourable to the cross-examiner or not (*Parkin* v. *Moon* 7 C. and P. 409), yet where a vehement desire is betrayed to serve the interrogator, it is certainly improper, and greatly lessens the value of the evidence, to put the very words into the mouth of the witness which he is expected to echo back (*R.* v. *Hardy* 24 How St. Tr., p. 755)."

Binding Over Witnesses Conditionally

The power conferred on examining justices by s. 13 of the Criminal Justice Act, 1925, to bind over witnesses conditionally, so that in all probability they will not have to attend at assizes or quarter sessions can be the means of saving much time,

some expense and some personal inconvenience, but evidently it is not being used to any great extent. In the Court of Criminal Appeal on April 22, the Lord Chief Justice said the court wished to call the attention of justices and their clerks to this power, and to the desirability of making more frequent use of it. The experience of judges on circuit, said Lord Goddard, was that this power was hardly ever exercised nowadays, and consequently a great many witnesses were put to needless trouble in attending assizes or quarter sessions, and much unnecessary expense was incurred. Particular attention was directed to rules 8 and 9 of the Indictable Offences Rules, 1926. It was particularly desirable that medical men should only be conditionally bound over if their evidence was unchallenged and really only formal, as was so often the case in charges of carnal knowledge, or of wounding where there was no dispute as to the nature and extent of the injuries. Ample provision was made by the rules for securing the attendance at the trial of witnesses conditionally bound over if they were needed.

The attendance of a witness may be considered unnecessary " by reason of anything contained in any statement by the accused, or of the accused having pleaded guilty to the charge or of the evidence of the witness being merely of a formal nature." This enables the justices to exercise a wide discretion. As to anything that the accused may have stated, *Stone*, in a footnote at p. 58, suggests a typical example : " For instance, to a charge of housebreaking and stealing, the accused may plead not guilty but admit having had possession of the stolen property. In such a case the witnesses called to trace the property to his possession can be bound over conditionally."

Since the justices are required to take into account any representations made by the accused or the prosecutor, and since, as the Lord Chief Justice observed, the accused must be informed of his right to require the attendance of a witness conditionally bound over, and of the steps he should take, there should never be any question of hardship or injustice.

Drivers Under the Influence of Drink

The difficulties of the police in dealing with prosecutions under s. 15 of the Road Traffic Act, 1930, are not sufficiently appreciated by the general public, who sometimes criticize the police for not taking action in cases which the public think ought to be the subject of prosecution. These difficulties are briefly and clearly stated in an article in *The Police Review* for April 11.

The writer recognizes the danger created by the presence on the road of a driver who is not sober enough to be in charge of a car, and agrees that the police must therefore take all possible steps to remove the danger, but must keep within the limits of the law, and not exceed their powers. It often happens, moreover, that although a policeman is positive that a motorist is under the influence of drink he cannot satisfy the magistrates and the case is dismissed. The dismissal may be followed by an action in respect of an alleged unlawful arrest, which must be a matter of considerable anxiety to any police officer. This fact may make police officers hesitant about bringing cases before the courts.

When an arrest has been made, medical evidence is obtained if possible, but it may lose much of its value if, as can easily happen when an arrest takes place in the country, there is considerable delay before the doctor can arrive and make his examination, always assuming that the defendant consents to the examination.

As to the tests applied by medical practitioners the article says : " It is entirely a matter for the doctor who carries out the examination to apply what tests he thinks suitable, and the police have no part in these tests. The result is that different doctors prescribe different tests according to their own particular ideas of suitability, and they vary from force to force . . . The police would be extremely unlikely to take a case to court if medical evidence of the offender's condition was not available.

" It can be seen that much of the responsibility of proving the person's condition is removed from the police and rests with the medical profession . . .

" Many suggestions have been advanced for a fair means of deciding a person's condition. Some people consider that tests should be standardized, and others would like to see legislation framed to allow the taking of blood or urine samples, to ascertain the alcoholic content, in all cases where persons are arrested for this offence.

" There is no difference of opinion, however, that a policeman's lot is not a happy one when dealing with s. 15."

Findings not Keepings

A charge against a man and his wife arising out of the finding of a watch in an omnibus, recently came before the West Kerrier Magistrates' Court. It was alleged that the wife, when entering the omnibus, trod on a watch which she then picked up, believing, as she said, that it belonged to a boy who lived next door to her. Finding this was not so, she handed it to her husband, who said he would wear it for six months and if it was not claimed, go to the police. Later he was seen wearing the watch, which was recognized, investigations followed, his wife was charged with stealing by finding, and he with receiving. Both were fined.

It is quite clear that a man can be convicted of receiving property stolen by his wife, *R.* v. *M'Athey* (1862) L. and C. 250. As to the position where the wife is the alleged receiver, a footnote at 9 *Halsbury* 553, states : " It has been held that a wife cannot be convicted of receiving property stolen by her husband *R.* v. *Brooks* (1853) Dears C.C. 184. But by the Criminal Justice Act, 1925, s. 47, the presumption of law formerly existing as to coercion is abolished, though it is still a good defence to a wife in the case of any offence except treason or murder that the offence was committed in the presence of and under the coercion of the husband."

Apart from questions of stealing by finding there was in this particular instance another aspect of the matter, which was pointed out by the chairman of the bench who said that there was a statutory duty on anyone finding an article on a public service vehicle to hand it to the conductor immediately. By the Public Service Vehicles (Lost Property) Regulations, 1934, para. 4, the duty of a finder of property is enacted thus : " Any person who finds property accidentally left in a vehicle shall immediately hand it in the state in which he finds it to the conductor, who shall deal with it in accordance with these Regulations." Paragraph 5 lays down the duty of the conductor when property is so handed over to him.

Magistrates and Prosecutions

In a question put to the service department of *The Honorary Magistrate* (New Zealand) a justice states that he has just been made a magistrate at a beach settlement and that he is in fact the only magistrate resident there. He has been pressed by a number of other residents to take action to stop the din of barks and howls of the dogs that infest the environs of the beach. He writes : " Their complaints are fully justified, as I am often awakened by the canine howls myself. Now, have I, as a J.P., any powers of direct action I can take in the matter ? So far the only advice I have given is to report to the police at the nearest town, or seek advice of a solicitor . . ."

The answer given is as follows: "You have no right to take any action as a J.P. In fact the law appears to be somewhat defective in regard to dealing with matters of this nature, unless the local authority which controls the beach has some byelaw under which action could be taken by the police . . . There is, of course, a civil remedy by those aggrieved against the owners of the dogs for damages and injunction in regard to the nuisance that the dogs cause. Luckily, such actions can now be taken in the magistrate's court instead of the more expensive and delayed procedure of the Supreme Court."

In this country, as evidently in New Zealand, there are not many cases in which magistrates can take direct action. They have certain special powers of arrest, hardly if ever exercised, and they have no general power to order the police or anyone else to institute a prosecution. They may, of course, call the attention of the police to circumstances which seem to indicate the need for taking action, but it would hamper them in the exercise of their judicial powers if it was part of their duty to order prosecutions to be undertaken. They grant process upon complaints or informations made or laid before them, whether by the police or other persons. In *R.* v. *Exeter Corporation* (1880) 45 J.P. 158, an action before Field, J., the learned judge referred to the fact that certain justices had apparently ordered the police to prosecute certain persons, and said that the constable was not bound to obey such a direction. He made it clear that any such direction as was given in this instance was really a suggestion rather than an order upon the police.

The Intoximeter

Alcohol content in blood or urine is considered to be one way of testing a person's condition as to sobriety especially when there is a suggestion that what appear to be symptoms of drunkenness are in fact attributable to some other cause such as shock or some disease or the effects of insulin.

That excellent journal *The Police College Magazine* contains a short but important article by Sergeant M. B. Patrick, of the Grimsby Borough Police, on an instrument called the intoximeter which, he submits, may be of considerable value to police officers in dealing with a motorist who is suspected of being under the influence of drink. The instrument is easily portable and could be used on the scene of an incident in order to make at least a preliminary test for alcohol, with more detailed scientific tests made later in a laboratory if necessary.

The matter is of great importance since, as the article states, in England, Wales and Scotland there has been a steady increase in the number of arrests for driving whilst under the influence of drink, and the seriousness of that kind of offence is beyond all dispute. As Sergeant Patrick says, the offence is a difficult one to detect unless the person is obviously under the influence of alcohol, yet the effects of even a small quantity of alcohol may be such as to reduce that co-ordination between mind and body which is so necessary for the proper control of a motor vehicle on the highway.

Since apparent drunkenness may be due to some cause not associated with alcohol, any device which helps to distinguish the influence of alcohol from other causes, any instrument which can give positive results is worth study, and Sergeant Patrick asks "Can the Intoximeter, used in certain States of America to assist in police prosecutions, be adopted by us?" Its advantage is that it can be used "on the scene," because it does not require that a sample of some fluid should be taken from the body, the test being applied to the breath. The theory is that if a sample of alveolar air is available for analysis, the concentration of alcohol in the blood can be indirectly determined. It must be conceded that even when the alcoholic content is determined the question of its influence upon a driver depends upon his capacity and habits, but at least it would generally be admitted that where the percentage is very high it provides important evidence. The article states that in some parts of the United States of America the presence of a certain percentage raises a presumption that the person is under the influence of alcohol so as to be incapable of driving a car properly and with safety on a public highway.

The instrument consists of three communicating tubes, one of which has a rubber balloon attached. The suspect is asked to blow up the balloon, and if he does so the subsequent procedure appears to be simple enough in its various stages and in skilled hands. The difficulty, it seems to us, is that the suspect can always refuse to take part in the test, just as he can refuse to supply fluids for a test. However, it is probable that in many cases the suspect will prove willing and, as the writer points out, it might not only assist the police but also prevent an innocent person from being arrested and ensure that anyone suffering from shock, diabetes or other illness would receive immediate medical attention when the tests prove the absence of alcohol.

Perpetuities, etc.

A good proportion of our readers have in their early days been obliged to master the rule against perpetuities, with its derivative rules springing from the will of Peter Thellusson. Some are still obliged to bear these rules in mind, in their daily work, as conveyancing solicitors or otherwise. Few, probably, can have regarded the rules as a subject for humorous treatment. To any of our readers who knows what is meant by "perpetuity," we commend an article in the *Law Quarterly* for January, by Professor W. B. Leach of the Harvard Law School, who has achieved a treatment we can best describe as rollicking. In England the rule against perpetuities and the Thellusson rules, right or wrong, have come to be axiomatic. In the United States this is not so. We gather from Professor Leach's article that in some States the judiciary have followed English law, and in others the legislature has done so, whilst in some of the first group the legislature has intervened to alter the rules. In other States, again, the law is silent on the matter. Professor Leach is concerned at this absence of uniformity, and on the whole is averse from the extension to or continuance in his own country of the present English rules. He points out that they originated in judicial attempts to curb great accumulations of property in private hands. The judges were first concerned with realty and, when Parliament came on the scene with Thellusson, it had the judicial precedents before it, in setting to work to apply analogous rules to an accumulation of personalty. At the present day, great accumulations are effectively prevented in this country by taxation, and we gather that Professor Leach would prefer to see this method followed in the United States, rather than an extension State by State of a specific rule dealing with accumulations as such. On the other hand, legislative efforts towards getting rid of the rule where it exists have not been always happy; examples of this, and of efforts to deal with the parallel technicality of *Shelley's* case, provide some of the comic relief in the article—as for example a western legislature's misunderstanding of what is meant by "purchase." For such reasons the professor would, we gather, like our Parliament, with its better capacity for handling legal technicalities, to kill perpetuity and Thellusson, thus setting a precedent which his own country could follow State by State. It is impossible in a short note to do justice, either to his learning or the humour with which he presents it; the article would be found most interesting by any English lawyer.

THE HIGHWAY CODE

REPORT OF THE COMMITTEE ON ROAD SAFETY

The Committee on Road Safety, a representative body with members drawn from government departments, the police, various local authority associations, road users associations and other interested bodies, were asked to consider (*a*) the desirability and practicability of giving selected precepts of the Highway Code the force of law and (*b*) other means of improving the Code. Their report was published by the Stationery Office on April 9, and can be bought for 9*d*. We should think it is likely to have a ready sale, because the question of road safety concerns us all and it is important that any action taken on the report should be understood and supported by the public whose interests are so vitally effected. We made reference to the proposals to give the Code the force of law in a note of the week at p. 1 of the current volume. We are glad to see that the Committee has come to the conclusion that the proposal is not one which they can recommend.

The proposal which the Committee considered was a plan put forward by Mr. Edward Terrell, Recorder of Newbury. He urged that the Code had failed in its object because it is, in its present form, a confused series of rules and exhortations and has not, by s. 45 Road Traffic Act, 1930, the force of law. His object was to produce a clear and simple Code which would codify the law of negligence on the roads. According to the Report he urged that this would help the police and the courts and, coupled with the imposition of disqualification for driving for breaches of the Code, would make all road users learn and understand the Code.

In commenting on Mr. Terrell's plan the report states that in the Committee's view the rules proposed by him could not be both simple and legally satisfactory ; they would either be so involved as to be difficult to understand or so generally expressed that they would not constitute the codification of the law which Mr. Terrell had in mind. The Committee also doubted whether the public would accept the creation of new offences which would appear to be necessary if the rules, with the force of law, were to apply to pedestrians and pedal cyclists. We would add to this that to enforce such rules at busy crossings when pedestrians in cities and towns were streaming homewards in large numbers would seem to call for very large additions to the police forces of the country. If, on the other hand, the rules were not enforced except casually when some particular incident brought the breach of a rule to light it would mean that in general they would be disregarded, and would do nothing to improve road conduct and road manners. This view finds support in para. II of the report which states that Mr. Terrell contended that no strengthening of the police would be necessary, and that he apparently had in mind that normally the police would take action only after an accident in which a breach of a rule was a factor. The Committee considered, however, that if the rules were given the force of law they should be enforced irrespective of an accident occurring. They thought also that if the necessary additional police were available their mere presence on the roads as mobile patrols would secure a great improvement in the conduct of road users without recourse to proceedings in courts.

The report accepts that to seek to introduce a measure of control over the behaviour of pedestrians would cause much controversy. We agree that this is so, and yet it must, we think, be admitted that the behaviour of some pedestrians in busy streets is as criminally reckless as that of some drivers of vehicles. It is true that the pedestrian may not run into or collide with anyone else, but he may force a driver into a position when he has no way of avoiding an accident, and in such a case it is the pedestrian who is morally responsible for any injuries caused to unfortunate third parties or even to the unoffending driver. We cannot suggest a practical way in which the law can be made to deal satisfactorily with such reckless conduct by pedestrians, and we are opposed to the introduction of any new penal provisions which are not reasonably likely to be diligently enforced.

The Committee was not convinced that the proposals to make a breach of the rules an offence would have the effect on court proceedings which Mr. Terrell desired. It might lead, in their view, to breaches of the rules being regarded as " technical offences," or to a lenient view being taken in any case where some driving offence was alleged but no breach of any rule could be proved. The defence might claim that, if no breach of any rule could be shown, or a case of alleged dangerous or careless driving could not be very serious.

Another point on which the Committee did not agree with Mr. Terrell's plan was in the matter of disqualification for driving. Subject to exceptional circumstances, the plan proposed that a conviction for breach of a rule should lead automatically to disqualification. The report records the Committee's agreement as to the value of disqualification as a deterrent, but expresses the view that it is not proved that the provisions in the existing law are unsatisfactory. Although the Committee thought that courts do not impose disqualifications often enough they were in agreement with the views of the earlier Committee on Road Safety that disqualification should follow automatically on conviction only in cases where danger to the public was involved or was likely by reason of the offence.

In para. 26 of the report are summarized the Committee's suggestions for improving the Highway Code without giving it the force of law. They considered that the Highway Code proper should be restricted to simple rules and an appendix illustrating traffic signs and signals, and that these rules should not deal with matters which are the subject of specific statutory requirements. They would like to see the rules so framed that failure to comply with a rule might be used as evidence in criminal or civil proceedings. Subject to what we say later we think this is probably sound provided that it is accepted that courts should give equal weight to evidence which showed that the failure occurred in an emergency produced by some incident outside the control of the person against whom the failure was alleged.

Another suggestion is that policemen should be encouraged to emphasize in their evidence any conduct by a party in proceedings for driving offences which constitutes a breach of a Highway Code rule. We are not certain without further consideration whether this is a useful suggestion or not. We tend rather to the view that it is the function of witnesses to state what they saw and heard, and that it is for the court, in weighing the evidence, to have in mind the provisions of the Code and to decide whether there was any breach of a rule, and if so the effect in relation to the offences charged. Policemen as what we may call expert witnesses in traffic cases should always have in mind that the Highway Code exists, and that evidence of conduct showing a failure to follow the rules in the Code is almost certain to be relevant when a traffic offence is alleged. If it is left at that all is well, but we view with some alarm any suggestion of evidence such as " the defendant did so and so (or failed to do so and so) and this, your worship, was a breach of rule X of the Highway Code." This goes too near, we think, to

treating the breach of a rule as an offence, and would tend to convictions being obtained, not for the offence charged, but because there had been a breach of rule X.

The Committee was not unanimous in all its suggestions. Major Bale, O.B.E., of the Standing Joint Committee of the R.A.C., A.A., and R.S.A.C., Major Smith, M.C., of the National Road Transport Federation, and Mr. J. Donlon, of the Trades Union Congress were unable to agree with the views of the majority as expressed in paras. 36 and 37 of the report. They consider that greater respect can be gained for the Highway Code without any alteration of its status in law and that s. 45 (4) Road Traffic Act, 1930, should not be amended.

The majority recommend (para. 36) that s. 45 (4) should be redrafted to provide that although a failure to observe any provision of the Code shall not of itself constitute an offence nevertheless failure to observe, or the observance of, any rule of the Code shall in any proceedings, criminal or civil, be *prima facie* evidence of negligence, or the absence of negligence, on the part of the person concerned.

The minority suggest that this would lead to confusion because in criminal proceedings, they say, negligence by itself is not the standard by which criminal culpability is judged. Also, they urge, it would alter the law on civil liability, a matter to which the Committee could not give full consideration as it was not within their terms of reference.

The minority also voice the view that the proposed amendment of s. 45 (4) is undesirable because if there is conduct on the part of a driver which ought to be made an offence and is not at present within the scope of ss. 11 and 12 of the Act of 1930 those sections should be amended; the result should not be achieved in a roundabout way by amending s. 45 (4). This is, we think, another aspect of the matter we were considering in discussing the question of how evidence should be presented when a breach of a rule was alleged as part of the conduct said to constitute a substantive offence.

It remains to be seen whether and, if so, to what extent the Government will seek to implement the Committee's report. Road safety is a constant and an urgent problem. We adhere to a view we have previously expressed that in a matter affecting the lives and the conduct of such a large percentage of the population as this does penal provisions by themselves can never provide the answer. It will always be impossible to detect and to bring before the courts anything like a large percentage of the cases that occur every day in which someone on the roads behaves in a way deserving of punishment or, at the least, of censure. That being so the answer is, by education, to improve people's conduct and road manners, to spread abroad the spirit of "live and let live" (this is, unfortunately, all too appropriate), to make everyone realize that the seconds, the half-minutes or the minutes saved may be bought at too high a price, that carelessness and lack of concentration in busy traffic can have results out of all proportion to their causes, and that to think of the other person and his point of view is not nearly so hard as some people seem to find it. Do unto others as you would that they should do unto you. It is a simple and an ancient maxim, but how much easier life would be, not only in relation to the roads, if we could all remember it and try, really try, to live up to it.

ELECTION EXPENSES AND THE PARTY

[CONTRIBUTED]

Over the last two years election expenses have come under notice in two particularly interesting instances. The conflict has been the familiar one. The right of free speech and publication has been again examined in the light of the statutory limitation of individual candidate's election expenses.

In February of this year at the Central Criminal Court the trial took place of the Times Publishing Co., Ltd., a company which had advertised in *The Times* newspaper, and the secretary of that company; *R.* v. *Tronoh Mines Ltd. and Others* [1952] 1 T.L.R. 461, [1952] 1 All E.R. 697. The circumstances were that during the last general election the secretary on October 19 had inserted in *The Times* (as well as in other national newspapers) what was called "an interim statement on dividend limitation to shareholders of the Tronoh-Malayan group of tin-mining companies," and the Crown alleged that the expense had been incurred contrary to s. 63 of the Representation of the People Act, 1949. The following passage from the advertisement, headed "Your opportunity," was read:

"The nation, let alone your valuable companies in Malaya, cannot survive if the worm of Socialism is permitted to continue to eat into the very core of its economic life. In order to bring the Body Politic back to health it is vital to be rid of the disease which is attacking the prosperity of your Companies, and is draining away the industrial lifeblood of the Country . . .

". . . The coming general election will give us all the opportunity of saving the country from being reduced, through the policies of the Socialists Government, to a bankrupt welfare state . . ."

Counsel for the Crown explained that the case was a test case. For that purpose the constituency chosen was the Cities of London and Westminster, chosen "against the Crown" because it was a safe seat for a Conservative and no advertisement of the sort would have been likely to have affected the result. The Crown's submission was that the advertisement in *The Times* represented an unauthorized election expense of £800.

Mr. Justice McNair in the course of his judgment said: "The charges were brought under s. 63 of the Representation of the People Act, 1949, a consolidating statute . . . The section prohibited the incurring of expenses by any person other than the candidate, his agent, or those authorized by his agent on account (*a*) of holding public meetings . . .; or (*b*) of issuing advertisements . . .; or (*c*) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate . . ."

The judge pointed out that the section provided no mode by which an advertisement in a national newspaper supporting a party and not an individual candidate could be authorized, and that lent strong support to the argument that it was not prohibited. Also there was no way in which such an expenditure could be apportioned for the purpose of any particular return of expenses. The heading, "Election Expenses" to the group of ss. 60 to 78 was to be regarded as forming part of the statute itself and might be used as the key to each of the sections. Election expenses were defined in s. 103 as "Expenses incurred, whether before, during, or after the election on account of or in respect of the conduct or management of the election." "Election" there meant a particular election. "Parliamentary election" was defined by s. 17 (1) of the Interpretation Act, 1889, which made it quite clear that it meant an election for a particular constituency and not the totality of those elections

which was commonly known as a general election. What was prohibited by s. 63 was the incurring of expenses of one of those particular categories with the effect of supporting a particular candidate in a particular constituency, which, having been authorized by the election agent, would form part of the election expenses for that constituency and thus be subject to the statutory maximum for that constituency.

The judge held that no reasonable jury could conclude that the expense incurred was prohibited. The matter in the case was a newspaper advertisement. Counsel for the company and its secretary said that the same day as the advertisement appeared in *The Times* it appeared in the *Daily Herald* also, and that on the same day that paper ran an editorial which disparaged one of the Conservative candidates in a particular election.

A little over two years before, on December 7, 1949, the then Attorney-General made a statement in the House of Commons "to remove a serious public misconception." The statement arose out of an answer to a supplementary question on the previous Monday. The question was whether, in considering expenditure by commercial and public bodies in connexion with electoral propaganda, the A.-G. would also consider the gift by the Co-operatives of £30,000 for party political propaganda, and also such gifts given by trade unions, and indeed money spent by the Central Office of Information on controversial problems. The A.-G. had answered: "I was going to say that as far as the first two cases of expenditure are concerned I have not any particular information about those, but from what has been said I see no reason to distinguish these payments from other payments, whether public or secret, to the political funds of any particular political party."

The A.-G. went on to refer to two leading articles in newspapers which referred to his answer as "an astounding admission" and said: "... It was suggested, directly or by implication, that my action in the matter of the enforcement of the law relating to election expenditure had been conducted and would continue to be conducted in a partial manner and influenced by political bias ... So far as electoral law is concerned, private citizens are entitled to make such donations to political funds as they think proper. This right is enjoyed by them both individually and collectively, thus, subject to the rules of their own constitution and of the general law, corporate organizations such as industrial concerns, co-operative societies, or trade unions whether of employers or employed are entitled to make contributions to party funds whether secretly or publicly ... The electoral law is, however, concerned with the manner in which those funds may subsequently be spent on propaganda calculated to influence the result of an election. That is a matter to be considered in the light of the effect such propaganda ... is calculated to have when the election occurs."

Nationalization being at that time a live political issue, and threatened industrialists publishing arguments against it, a member asked if the law was that a party was responsible for expenditure over which it had no control. The A.-G. answered that: "Third parties who were not actually supporting a particular candidate must, so far as expenditure of money was concerned, keep out of the ring during an election."

The present Home Secretary asked if there were not two necessary conditions before proceedings might be commenced; an election must have started and the expenditure must be directed towards the election or defeat of a particular candidate. The A.-G. then went further and said: "... Clearly no candidate need be named ... and if the propaganda was such as to support the policy to which that candidate adhered, it would be open to a court to say, within the wording of s. 42 of the Representation of the People Act, 1948 (now replaced by s. 63 of the 1949 Act), that it was calculated to promote the return of that candidate or to disparage the other candidate who was opposing the policy supported by that propaganda." As to the start of an election, the A.-G. said that that might be long before a dissolution. He instanced a party securing a monopolistic retainer on hoardings a long time before "anybody contemplated an election," and using them for the candidate's posters during an election, or even kept placarded with party posters before and kept up all through the election—also party slogans on packeted goods (presumably with packeted sugar in mind)—and emphasized that the question whether an election had actually started was one for the courts in particular cases to decide, as also was the question as to whether certain expenditure was illegal or not.

A few days later, on December 15, 1949, a debate took place in the House on political funds. A Conservative member referred to a "little book" issued by the Labour Party which was straightforward Labour Party propaganda," and asked if it was designed to influence the electors. A Liberal member said that the Conservative Party was frightened to publish its accounts. The then Home Secretary said that it was "Highly desirable in the interests of clean government ... that the people should know what organizations great, medium and small were behind the policies which different political parties were advocating." A motion was carried on party lines in favour of disclosures of political funds.

Before considering the extent to which the recent case may have elucidated the problems, reference may well be made to a letter published in *The Times* newspaper from Sir Alan Herbert on September 18, 1951, in which he urged that the candidate's deposit should either be from the candidate's own purse, or be abolished altogether. He wrote that, in the case of candidates supporting "a certain party," the amount of the deposit was advanced by a certain bank on payment of an insurance fee of £10.

No one can say that the recent case has elucidated the problem of what is to be included as part of the candidate's expenses, so as to be an item in his return of expenses and to be subject to the statutory maximum, and what is party "propaganda" and outside it. There is the difficulty remarked by the judge in apportionment of the usual forms of party boost, not to mention the absence of an appropriate heading in the prescribed form of return. Consider what might happen if, in lieu of being paid into party funds, the money be spent directly in newspaper advertising (as in *The Times* case), or in any other way such as poster advertising. The parties in the A.-G.'s "ring" are presumably the candidates and their supporters. Making all allowances that Tronoh mines might have been politically inspired as obviously was the case, the judge in giving reasons specifically assumed for the purpose of his observations that the jury could properly have found that the object of the expense of the publication was to advance the prospects of the anti-socialist case generally at that particular general election. On that assumption, which went all the way along the A.-G.'s argument, the judge held that the advertisement in a national newspaper supporting a party was not unlawful. He accepted the submission of the defence that s. 63 did not prohibit expense "The real purpose of which was general political propaganda," even though it did incidentally assist a particular candidate against others. On this question the judge said: "The conclusion I have reached on the general construction of the section renders it unnecessary for me to express any final view on the question whether the proof of intention, object, or view of promoting or incurring the election of candidates generally of one political party or opposing one particular party in all elections at a general election, could ever be sufficient evidence on which a jury might act, of specific intent such as was charged in this case ... Having listened to the arguments on that point. I am

strongly of opinion that in a case such as this it would be necessary to prove specific intent related to the particular election, but I express no final view on that."

Having in mind the importance of the party in modern electioneering, and the comparative eclipse of the individual candidate as such, the chances of his success depend at least as much on the party's propaganda as on his own individual efforts, the most important part of which is probably to make clear that he is attached to the party. Without party broadcasts, television appearances of leaders, newspaper posters and other advertising, the general run of an election address would be feeble. It is reasonably obvious as well as generally accepted that the object of party propaganda is to help the party's candidates in the "ring." If the propaganda (unfortunate word to use in this connexion) is honest publicity, what other sensible object could it have?

Some forms of party propaganda which might not be specific in a general election might be particular in a bye-election, and in *The Times* case the judge raised a question as to whether public party meetings might take place in the constituency during the bye-election so long as no particular candidate was named. But the more general party propaganda, perhaps placards or posters, presumably is in no different case, and it is hard to know where to draw any line.

In the House of Commons on March 13, 1952, a question was asked of the Home Secretary whether in view of the Tronoh Mines judgment he would introduce legislation to clarify the whole of the law relating to election expenses and corrupt practices. The Home Secretary in a written reply stated: "No. I do not think that fresh legislation is called for as a result of this judgment."

"EPHESUS."

OLD PEOPLE'S WELFARE

The conference held in Scarborough on April 3-5, 1952, under the auspices of the National Old People's Welfare Committee, afforded another opportunity to representatives of local authorities and voluntary bodies to discuss some of the problems with which they are confronted in dealing with the care of old people. It is now fully realized that cash benefits and social services paid for by the State and the local authorities are not adequate in themselves and that there still remains much to be done by voluntary effort in co-operation with the statutory bodies.

This is the Sixth National Conference arranged by the Committee whose first chairman was Miss Eleanor Rathbone, M.P. She was succeeded by Mr. Fred Messer, M.P., C.B.E., who in turn was succeeded last year by Mr. John Moss, C.B.E. The Conference was attended by about 430 delegates. It was useful also that there were "observers," as they are called, from the Ministries of Health, Labour and National Insurance, and of the National Assistance Board. Sometimes, at this kind of conference, an official learns what other people think about his Ministry and he is able to pass on useful information to his superiors.

At previous conferences the main discussions have been concerned with the housing of old people, either communally or in separate dwellings. The needs of old people have not yet been fully met in these directions but it was well that this year the conference was directed to the consideration of what can be done to help older people to live happily in their own homes and how they can be enabled to remain in useful employment.

Mr. Moss took the chair at the opening session and referred to his recent visit to Australia and New Zealand. He said that from the cash point of view the aged pensioner is better off there than in this country but that from the welfare angle Australia and New Zealand are not so advanced as this country. In the larger cities it seems there is much need for the establishment of bodies like the old people's welfare committees in this country. He said that at Auckland and Dunedin in New Zealand he attended meetings of old people's welfare councils which have been established on a similar constitution to those in Britain. There was a movement for the establishment of old people's clubs in some parts of New Zealand. In Australia, at Melbourne he spoke at the inaugural meeting of the Old People's Welfare Council for Victoria which had been sponsored by the National Council of Women. He found an interest in the establishment of old people's clubs in Australia, of which there were only one or two in some of the large cities.

The Conference then had three speakers: Mrs. Gertrude Williams, B.A.; Dr. T. S. Hall, M.B.E., T.D., M.D., D.P.H., Deputy Medical Officer for Lancashire; and Mr. F. D. Weeks, secretary of the Manchester and Salford Council of Social Service.

Mrs. Williams, speaking on "Old People in Society," said the most important social change in the last fifty years was the reduction in the birth rate which meant that there were fewer people to share the responsibility of looking after the old. Sixty years ago there was always an unmarried daughter who could look after them; now there were fewer unmarried women and these were working and had not the leisure to look after the elderly. This was why the State had come in, to share the burden which the individual breadwinner could not manage himself.

Dr. Hall, in a paper on "What the Local Authority can do," explained the administrative arrangements of the Health Department of the Lancashire County Council, covering a population of two million and an area of a million acres, under which there are seventeen divisional health committees. After referring to the scope of the National Assistance Act he suggested that the aim, in thinking of the aged, must be "Recovery and rehabilitation, whether from illness or from infirmity or the simple loneliness which old age brings." A hostel place, like a hospital bed, is for the rarer case where care and attention is no longer available at home.

Referring to what the health department can do, he emphasized that from its own resources it can provide an extremely comprehensive information and intelligence service. There are available the health visitors, district nurses, midwives and home helps. In Lancashire, the nursing care of the aged in their own homes occupies a quarter of the time of the district nurses. Many suffer from diseases usually associated with old age although they are only in their fifties or sixties. Here there is scope for that preventative health work which is the main function of a health department. The County Council employs 850 home helps and thirty-six *per cent.* of the cases attended are aged or infirm persons. The percentage use of this service by the aged is even higher, being fifty *per cent.* Dr. Hall then referred to the suggestion in some quarters that the local authority should provide a registration and visiting service for old people at home, but he said that without voluntary help a visiting service would be expensive in public money and woman power. Finally Dr. Hall referred to the relations which the local authority may enjoy with voluntary organizations and mentioned that the County Welfare and Health Committees in Lancashire had co-opted representatives of three co-ordinating

voluntary organizations who had never failed to give generous help and judicious stimulation.

Mr. Weeks, in his paper on "What the Voluntary Society can do," mentioned that many of the services they wanted local authorities to assist are authorized by legislation which permits, but does not compel, the authorities to take action. The extent to which these permissive powers will be used depends mainly on three things—"Reasonable assurance that the work done will be efficient; confidence that the money will be wisely and economically used; and good grounds for giving a claim priority over all the other purposes for which that amount of ratepayers' money might be wanted." Mr. Weeks referred to Manchester as a good example of an area where there is close co-operation between the voluntary agencies and the local authority. The Corporation has appointed the Council of Social Services as its agent for administering grants towards the provision of old people's clubs.

OPEN FORUM

The chair at the second session was taken by Mr. G. E. Haynes, C.B.E., secretary of the National Council of Social Service, at which various problems were discussed in short speeches at what was called an Open Forum. There was considerable discussion on the need for the provision of Homes for persons who are not suitable for ordinary old people's homes, or for hospital. Dr. Brooke of St. Helier Hospital, Surrey, referred to the "half-way" house which had been provided in Surrey by the King Edward's Hospital Fund, and administered by a voluntary body for persons discharged from the geriatric unit at the hospital and who could not return direct to their own homes. Mr. M. R. F. Simson, secretary of the National Corporation for the Care of Old People, referred to the need for local authorities and hospital authorities to co-operate in the payment of maintenance costs in "half-way houses" and urged a closer link-up between the administration of the National Assistance Act and the National Health Service Act.

A subject on which magistrates are often concerned is the certification of persons suffering from senile dementia, but for whom no accommodation can sometimes be found except in the mental hospital. A representative of the National Association for Mental Health referred to a home in Surrey which was opened a year ago by the association for senile old people and emphasized the importance of such a home being integrated with the community. The president of the National Association of Local Government Health and Welfare Officers said that members of his association who were duly authorized officers under the Lunacy and Mental Treatment Acts were gravely concerned over this problem. In many parts of the country it is necessary to use the procedure and machinery of certification for admission to mental hospitals to obtain a bed for urgent cases of aged persons. He described the lack of suitable accommodation for senile mental cases as a grave blot on what is otherwise an excellent health and hospital service. He mentioned that in Norfolk there is a special hospital, separate from the mental hospital, for such patients and to which persons are admitted without certification. He urged that there should be a national inquiry on this matter and the chairman said the suggestion would receive the early attention of the National Old People's Welfare Committee.

Another matter which was discussed at the Open Forum, was Road Safety. It was suggested that zebra crossings should have approach signs fifty-eighty yards back and be adequately lighted at night. One speaker advocated the giving of instruction in road safety at old people's clubs.

THE EMPLOYMENT OF THE OLDER WORKER

At the final session, the chair was taken by Mr. Arthur Deakin, C.H., C.B.E., J.P., general secretary of the Transport and General Workers' Union. The speakers were the Rt. Hon. Sir Walter Monckton, K.C.M.G., K.C.V.O., M.C., M.P., Minister of Labour; and Dr. L. G. Norman, M.D., B.Sc., D.P.H., chief medical officer of the London Transport Executive.

Sir Walter Monckton said the primary concern of the Ministry of Labour in this matter is to provide the old person with work. But the social and work settings are not in separate compartments and there is great need that all concerned in any way with providing services or assistance to older men and women should act in concert, bearing in mind that action in any one part of the field impinges on another. For example, inability to find suitable work leads to premature ageing and deterioration and, consequently, earlier need for "care and attention"; on the other hand, suitable and timely provision in the home and social environment can help to keep old people fit and willing to continue at work. Just as the National Old People's Welfare Committee brings together the many varied interests concerned with the welfare of old people, so he (the Minister) had recently taken a step towards promoting the co-operation of all the interests concerned with the employment of older men and women by appointing a National Advisory Committee on the Employment of Older Men and Women. He said each of the interests represented on this new committee has a part to play in promoting the employment of older men and women. The rôle of the employers' and workers' organizations is clearly most important. It lies with them to see that suitable employment opportunities are provided for older people who are fit to work. Government Departments and local authorities have a dual interest in the subject—first as providers of health, insurance and other services which bear directly and indirectly on the employment of the elderly and, secondly, as large employers. Welfare organizations, such as the National Old People's Welfare Committee and the various voluntary bodies, obviously, said the Minister, have valuable contributions to make. It is estimated that about one million men and women over pensionable age are gainfully employed today. Twenty years ago the number was about the same. But whereas one million in 1931 represented 23¼ *per cent.* of the total number of persons of pensionable age, today it represents only 15¼ *per cent.* The Minister said the facts indicate three things:

(1) Older people *can* give useful service;
(2) There is a considerable reserve of unused labour to be found among older people;
(3) More employment of older people is, thus, both desirable and possible.

It is therefore the policy of the Government to encourage and facilitate the employment of older people. The aim is that no man or woman should be denied employment on account of age alone as long as he or she is able and willing to work. The objective of the Ministry is to augment, from the older people the total working population available for the normal jobs to be done in industry, commerce, the professions and other fields of employment. The Ministry take no direct part in what may be called "recreational work" schemes, such as those sponsored by some local authorities and voluntary organizations. The important thing is that there should be proper co-ordination between such "welfare" and "recreational" schemes and the work of the Ministry in placing older people in normal employment. At the same time, the Minister recognized the need for such a scheme and asked anyone responsible for one of them to make himself known to the manager of the local employment exchange who would be delighted to give any help he could.

In conclusion, the Minister emphasized that the problem of promoting the employment of older men and women is vital. It is an economic problem, but it is also the social and human problem of providing a proper place in the community for persons who are still fit and willing to work. To give a man who is able to work and who wants to work the opportunity to do so, to make him feel that his services are needed, and to let him earn to maintain himself—this is the best sort of welfare for him. A proper development of opportunities for older people to work as long as they are able will benefit all, and of special interest to those concerned with the care of older persons, it will help to ensure that the welfare resources available are not overstrained in providing for those who, given the chance, would be prefectly capable of looking after themselves.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Viscount Simon, Lord Porter, Lord Oaksey, Lord Morton of Henryton and Lord Tucker)

HARRIS *v.* DIRECTOR OF PUBLIC PROSECUTIONS

March 10, 11, 12, 13, April 9, 1952

Criminal Law—Evidence—Other criminal acts—Rebuttal of possible defence—Discretion of judge to exclude.

APPEAL against a decision of the Court of Criminal Appeal (LORD GODDARD, C.J., BYRNE and PARKER, JJ.), dated January 29, 1952, dismissing an appeal against conviction by the appellant.

The appellant was a member of the city of Bradford police force. He was tried at the Leeds autumn assizes in November, 1951, before PEARSON, J., on an indictment containing eight counts charging him with office-breaking and larceny on a series of dates in May, June, and July, 1951, by breaking into and entering the premises of a company of fruit and vegetable merchants situated in an enclosed and extensive Bradford market and stealing therefrom various sums of money. In every case the money stolen was only a part of the amount that the thief, whoever he was, might have taken. In every case the same means of access was used, and in every case the theft occurred in a period during part of which the appellant was on duty in uniform in the course of patrolling the market, and at an hour when most of the gates in the market were closed to the general public. On the first seven of these occasions, there was no further evidence to associate the appellant specifically with the thefts. On the eighth occasion, which was between 6 and 7 *a.m.*, on Sunday, July 22, the appellant, who was on solitary duty in the market as before, was found to be just outside the premises by two detective officers who had rushed to the spot on hearing, in the quarters where they were secretly waiting, the ringing of a bell actuated, without the knowledge of the appellant, by the thief's weight when he stepped on the floor of the shop. On this occasion, marked money which had been placed in the till had been abstracted, but it was not found on the appellant when he was arrested. It had been concealed in a coal-bin, not far away from where he was when first seen. The two detectives were well known to the appellant and might have been expected to be at once recognized by him, but when they entered the market, one by climbing over a gate and the other by opening it with some difficulty, though they were in the appellant's view at no great distance, he contended that he had not recognized them at first as members of the police force and so had not moved to join them. He said he thought they were market-men entering the area for some innocent purpose. By the time the two detectives had reached the premises he had disappeared from view and a little later came running up to join them. The time which elapsed between their first sight of him and his return was just sufficient to enable him to have reached the coal-bin and come back. Before the appellant was arraigned and in the absence of the jury, his counsel asked for the severance of the indictment and urged that the charge contained in the eighth count should be tried first and separately. The learned judge applied s. 5 (3) of the Indictments Act, 1915, and ruled that there was no good reason for ordering a separate trial on the eighth count and that the case fell within r. 3 of sch. I to the Act, since the charges formed part of a series of offences of the same or a similar character. It was urged that the first seven counts, if taken alone, would be unsupported by any relevant evidence. To this the answer was suggested that, if a jury took the view that the resemblance between the different thefts was so close that they must be regarded as the work of a single thief, the evidence of what happened on July 22 might be considered as identifying the criminal on all counts. The jury, however, returned a verdict of Not Guilty on the first seven counts, but found the appellant Guilty on the eighth count. He appealed to the Court of Criminal Appeal against this conviction on various grounds, one of which was that evidence as to the thefts that had occurred on the first seven occasions, when he was not shown to be near the shop at the time when they occurred, could not be advanced by the prosecution or considered by the jury as part of the material to prove the charge on the eighth occasion. The Court of Criminal Appeal dismissed the appeal, but the appellant obtained the certificate of the Attorney-General that the decision of the Court of Criminal Appeal involved a point of law of exceptional public importance and that a further appeal should be brought.

Held, that the prosecution might adduce all proper evidence tending to prove the charge against the accused, including evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment, without waiting for the accused to set up a specific defence calling for rebuttal, and evidence of similar facts, *e.g.*, to show intention or to rebut a possible defence of accident, might properly be admitted, but, though such evidence was strictly admissible, the judge had a discretion to exclude it if it merely tended to deepen suspicion against the accused and its prejudicial effect was out of proportion to its probative value. On the facts in the present case, however, the evidence on counts one to seven was irrelevant to the charge on the eighth count, but in the summing-up it was left to the jury as relevant, and so the appeal must be allowed.

Counsel: *Burton, Q.C.*, and *R. Lyons* for the appellant; the Attorney-General (*Sir Lionel Heald, Q.C.*), *Hylton-Foster, Q.C.*, and *Snowden* for the Crown.

Solicitors: *Sidney Torrance & Co.*, for *J. Levi*, Leeds; *Director of Public Prosecutions.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

HOUSE OF LORDS

(Before Lord Porter, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen)

JOHN LEWIS & CO., LTD. *v.* TIMS

March 3, 4, April 24, 1952

False Imprisonment—Arrest without warrant—Person arrested to be taken before justice or police officer as soon as reasonably possible—Right of detention for purposes of investigation.

APPEAL from an order of the Court of Appeal, reported 115 J.P. 265.

The respondent and her daughter entered the appellants' shop where the daughter stole certain articles. They then left the shop and the daughter placed the stolen articles in a bag carried by the respondent. Two detectives employed by the appellants followed the two women outside the shop and saw them go into another shop where the daughter again stole an article and placed it in the respondent's bag. As they came out into the street one of the two detectives accosted them, said they had stolen the articles, and asked them to come along with her. It was a regulation of the appellants that only a managing director or a general manager of the appellants was authorized to institute any prosecution. The respondent and her daughter were taken back to the appellants' shop and detained until the chief store detective and the managing director heard the account of the two detectives, after which the police were sent for and the respondent and her daughter were taken to the police station, charged, and released on bail. Next morning the daughter was tried and convicted, but the charge against the respondent was withdrawn by consent of the court as the appellants were advised that there was insufficient evidence to justify a prosecution. On a claim by the respondent for damages for false imprisonment,

Held, where a person in exercise of his common law right arrested a person without warrant, he should take the arrested person before a justice of the peace or a police officer, not necessarily forthwith, but as soon as was reasonably possible; in the circumstances, the taking of the respondent to the appellants' office to obtain authority to prosecute was not an unreasonable delay before handing her over to the police, and, therefore, the appellants were not liable for false imprisonment.

Wright v. *Court* (1825) (4 B. & C. 596), *Hall* v. *Booth* (1834) (3 Nev. & M.K.B. 316) and *Morris* v. *Wise* (1860) (2 F. & F. 51), distinguished.

Appeal allowed.

Counsel: *Melford Stevenson, Q.C., Wilson, Q.C., Blomefield* and *A. W. Hamilton* for the appellants. The respondent was not represented.

Solicitors: *Underwood & Co.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION
(Before Lord Goddard, C.J., Oliver and Byrne, JJ.)
PAGET PUBLICATIONS, LTD. *v.* WATSON
April 24, 1952

Obscene Publication—Order for destruction—Obscenity on inside of covers—Contents not obscene—Obscene Publications Act, 1857 (20 *and* 21 *Vict., c.* 83), *s.* 1.

CASE STATED by a metropolitan magistrate.

A warrant was issued at the instance of the respondent, Watson, an officer of the metropolitan police, under the Obscene Publications Act, 1857, authorizing the seizure of certain books, namely 13,000 copies of a publication published by the appellants, Paget Publications, Ltd., called "Slick Bedtime Stories." On a summons bringing before the magistrate to show cause why the publication should not be destroyed, the magistrate held that the illustrations inside both the back and front covers of the book were obscene, but that the contents of the book were not obscene, and he ordered destruction of the whole publication. The publishers appealed.

Held, that a publication could be obscene if part of it was obscene, and therefore the magistrate's order was right.

Counsel: *J. A. T. Hanlon* for the appellants; *Maxwell Turner* for the respondent.

Solicitors: *Brandon & Nicholson*; *Director of Public Prosecutions*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

THE LOCAL GOVERNMENT LEGAL SOCIETY (LONDON & HOME COUNTIES BRANCH)

A meeting of the London & Home Counties Branch of the Local Government Legal Society was held at the Law Society, 60, Carey Street, W.C.2, on Wednesday, March 26, 1952. The chair was taken by Mr. P. T. Durant, Assistant Solicitor, Tunbridge Wells.

The address was given by Mr. A. R. Bunker of H.M. Treasury on "Organisation and Methods."

Mr. Bunker said that the purpose of O. and M. work was described by the Select Committee on Estimates as "to secure maximum efficiency in the operation of the Government's executive machinery; and, by the expert application of scientific methods to organisation, to achieve economy in cost and labour." The Committee went on to say that "the operations of the O. and M. service, although not directed primarily to secure reductions in staff, almost invariably result in the more economical use of staff."

After describing the system of organization and methods in the Civil Service, Mr. Bunker discussed how it could be applied to Local Government. He suggested it might be difficult for more than a very few of the biggest local authorities to form O. and M. units of their own, and possibly the right solution for local authorities generally was to adopt some system under which an O. and M. service was provided on a "joint user" basis—perhaps through Local Authority Associations.

After Mr. Bunker's talk, questions were asked, and a vote of thanks to Mr. Bunker was proposed by Mr. P. J. Edwards.

The next meeting of the Branch will be held on May 28, 1952.

ROAD ACCIDENTS—FEBRUARY, 1952

Road casualties in February of this year were 1,035 fewer than in February, 1951. This is the first time since last June that the monthly casualty figures have been lower than in the corresponding month of the previous year.

The total for the month was 11,992, of which 304 were fatal; 2,796 persons were seriously injured, and 8,892 slightly injured. In the previous February the figures were: killed 342, seriously injured 2,979, slightly injured 9,706.

The greatest improvement was in the figures for casualties to adult pedestrians. These totalled 2,075, including 108 killed. Compared with February, 1951, there was a decrease in the total of 480, or nineteen *per cent.* and a decrease in the killed of thirty-five or about twenty-five *per cent.*

Figures for all other classes of road users also showed a decrease, except those for children. Casualties to child pedestrians totalled 1,651—about the same number as in the previous February.

Although figures for one month are not a reliable guide, the substantial decrease in the total casualties for February—notwithstanding the fact that there was an extra day in the month this year—gives reason to hope that the upward trend of the accident figures over the past three years has been halted. The decrease in adult pedestrian casualties is particularly encouraging since it follows a smaller decrease in January.

ADMINISTRATION OF THE HOSPITAL SERVICE

No spectacular and immediate achievements ensued from the extensive labours of the Select Committee on Estimates leading up to their eleventh report, session 1950-51, on regional hospital boards and management committees. The smallest progress seems to have occurred on the largest problem, which was described by the committee as "the anomalous position of the regional hospital boards." These, the committee had said, must either be given greater scope, or a move made to reorganizing the hospital service with the boards functioning in a purely planning and advisory capacity. Slight reaction by the Ministry of Health to the views of the committee, who, perhaps it should be said, had scarcely hit upon any new factors hitherto outside the mind of the Ministry, is indicated by the Ministry's laconic observation that "this is a question of major policy which will need careful consideration."

A movement towards greater scope for regional hospital boards has, however, been made by the restoration of power to them, as recommended by the select committee, to approve the use by a hospital management committee of savings under one head of their annual estimates to meet excess expenditure under another. Power also delegated to the boards to give formal approval to the detailed estimates of management committees will help to co-ordinate and consolidate regional administration, and some polish to those processes should ensue from special attention to be given by the boards, at the Ministry's request, to the carrying over from one financial year to the next of savings effected on its estimates by a hospital authority. The Ministry rightly mention the practical difficulty of deciding when the select committee's condition for carry-over, *viz.*, a real saving "by efficiency," has been fulfilled by an authority. There would be encouragement of the inflation of estimates, but this should not be an insuperable factor allowed to rob the service of benefits derivable from the enthusiasm which would be created among hospital authorities at the prospect of some tangible rewards for effective and praiseworthy management.

Rule-of-thumb ascertainment of staffing requirements of a particular hospital or group will hardly ever be practicable owing to differing circumstances; at the same time the review conducted by visiting teams should yield information applicable to the general as well as the particular and ought to yield data giving a good general guide to minimum and maximum requirements within which modifications can be made. Extensions of the supervisory functions of regional hospital boards will occur as the strengths of hospital management committees' staffs are determined following review, and the prior authority of a regional board required before additional appointments can be made.

Among other comments of the Ministry of Health on recommendations of the select committee is one which will surprise many who regard central departments as the source of much rigidity of outlook and unimaginative administration. The Ministry see various reasons against drawing up a list of items which should properly be provided by the hospital authorities from their share of the Hospital Endowments Fund, and for which Government money will not normally be available. About a dozen kinds of eligible items are specified by the Ministry as being suitable for expenditure from "free monies," ranging from sports facilities for staff to cosmetics for patients, but the Ministry illustrate the difficulty of drawing up an inclusive, or exclusive, list by mentioning that it may well be reasonable in a particular hospital, *e.g.*, one that is isolated, or occupied by long-stay patients, to provide from Exchequer funds amenities for staff or patients which should in a town hospital for short-stay patients be provided if at all by "free monies." Doubt may sometimes be felt whether the labours of the Select Committee on Estimates yield commensurate results in the practical field. On specific results this doubt may seem to be justified, but the general effect throughout the national health service of occasional probings by the committee is beneficial all the time.

CHESTERFIELD BANKRUPTCY DISTRICT TRANSFER

The Board of Trade announce that from March 1, 1952, the responsibility for the bankruptcy district of the county court of Chesterfield will be transferred from the official receiver at Nottingham (Mr. E. C. Stimpson) to the official receiver at Sheffield (Mr. C. A. Taylor). This change has been made to facilitate business in view of the proximity of the Chesterfield district to Sheffield.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

LIVERPOOL MURDER TRIAL

The Lord Chief Justice, Lord Goddard, has tabled a Parliamentary Motion calling upon the Government to consider "how far the necessity for extra-judicial inquiries after conviction and dismissal of an appeal would be obviated if the Court of Criminal Appeal had power to order a new trial".

This motion is understood to concern the case of Devlin and Burns, who were executed at Liverpool on April 25 for the murder of a widow. They appealed and after their appeal had been dismissed, the Home Secretary appointed Mr. A. D. Gerrard, Q.C., to hold an inquiry to see whether there was any possibility of a miscarriage of justice. Mr. Gerrard reported that there had been no miscarriage of justice in his opinion.

DRUNKENNESS

In a written Parliamentary answer, the Home Secretary gives the following details of proceedings and convictions for drunkenness in London in 1950 and 1951 :

	Metropolitan Police District		County of London		City of London	
	1950	1951	1950	1951	1950	1951
Proceedings for Drunkenness ..	17,261	20,046	14,984	17,563	137	125
Convictions	16,760	19,485	14,552	17,077	137	125

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 29

AGRICULTURE (POISONOUS SUBSTANCES) BILL, read 2a.

HOUSE OF COMMONS

Monday, April 28

INTESTATES' ESTATES BILL, read 2a.

Thursday, May 1

NATIONAL HEALTH SERVICE BILL, read 3a.

PERSONALIA

APPOINTMENTS

Dr. R. C. Farquhar has been appointed medical officer of health to the city of Lancaster. He succeeds Dr. J. A. Tomb who retires at the end of May.

OBITUARY

THE LATE SIR GEORGE BONNER

We record with deep regret the death of Sir George Bonner. Sir George, who was a Master of the Supreme Court from 1905 until 1926, and Senior Master and King's Remembrancer from that year until 1937, when he retired, died on Monday, April 28 last, at the age of ninety. Son of Charles Foster Bonner, of Spalding, Lincolnshire, and Elizabeth, daughter of Edward Swaine, of Somershall, Yorkshire, he was born on March 9, 1862.

Educated at Magdalen College School and New College, Oxford, where he graduated with honours in jurisprudence, he was called to the bar by the Inner Temple in 1885. That Honourable Society elected him a Bencher in 1921. Nominated by the then Lord Chief Justice (Lord Alverstone) to his Mastership, *The Times* describes his discharge of his duties in the following terms :—

"As a Master he was known for the good sense he displayed, and without any pretensions to being an erudite lawyer, he usually succeeded in making the order that the circumstances of the case required and in chambers he was always helpful to practitioners."

Following his appointment to the office of King's Remembrancer, Bonner received the honour of Knighthood in 1927. He was the author of a number of legal works and publications including *The Law of Motor Cars and Hackney and Other Carriages on the Highways* (1st edn., 1898 ; 2nd edn., 1905) ; and articles on Actions and Interpleader and Practice (2nd edn., *Halsbury's Laws of England*). He also wrote a work on the office of King's Remembrancer in England (1930).

Sir George Bonner was a man of fine physique and considerable personal courage, as was evidence by his rescue in 1918 (at the age of fifty-six) of a boy from drowning off the Thames Embankment. For this he received the certificate of the Royal Humane Society for saving life. He was married in 1896 but his wife predeceased him and he is survived by two daughters.

Mr. W. Terry, acting clerk to Warmley rural council, died suddenly recently.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 41.

A CUSTOMS OFFENCE ATTRACTS A HEAVY PENALTY

A Blackpool car dealer appeared on April 7 last at Preston Magistrates' Court to answer a charge of being knowingly concerned in the removal of uncustomed goods, namely, seventy foreign manufactured watches and seventeen foreign manufactured watch bracelets, with intent to defraud H.M. of duties due thereon, contrary to s. 186 of the Customs Consolidation Act, 1876. The defendant was further charged under the same section with dealing with uncustomed goods, namely, eight watches, with the like intent. An information was also exhibited under s. 207 of the same Act for an order for the forfeiture and condemnation of a motor car seized by the customs officer under s. 202 whilst the uncustomed goods were in transit in the car. A claim having been made for the vehicle, the Commissioners of Customs and Excise asked the justices for an order under s. 226 of the Act.

For the prosecution, it was stated that, following upon a wireless message, the defendant was intercepted whilst driving a 1950 Austin A40 car after being followed by a police patrol for three miles. On a seat in the car was found an attache case containing the uncustomed goods, which along with the car, were seized.

For the defendant, who pleaded guilty to both charges, it was conceded by his counsel that, in the circumstances and having regard to *De Keyser* v. *Harris* (1935) 99 J.P. 408, the order for forfeiture could not be resisted. Defendant, said counsel, had made himself liable to very heavy penalties amounting to more than £1,300, but he had forfeited the watches in question, for which he had paid about £250, and also the car which, at today's prices, he valued at £900. He asked the justices to deal with his client as leniently as possible. It was observed that the Commissioners themselves had power of remission and mitigation in respect of the forfeited goods.

The justices made a formal order for the forfeiture of the car and imposed a penalty of £650 in respect of the first charge and £50 for the second. The court ordered that in default of payment within one month the defendant should serve a total of six months' imprisonment.

COMMENT

Section 202 of the Act of 1876 provides that all conveyances . . . made use of in the . . . conveyance of any uncustomed goods, liable to forfeiture under the Customs Acts, shall be forfeited, and s. 207 provides that if a claim has been made by the person from whom such seizure is made, proceedings shall be taken for the forfeiture and condemnation thereof either by information filed in the High Court or exhibited before any justice of the peace. Section 226 enacts that when such information has been exhibited before any justice, he shall summon the owner of the goods or the person from whom they were seized to appear before him and proceed to the examination of the matter, and on proof that the goods are liable to forfeiture, *may* condemn the same.

It will be recalled that in the case of *De Keyser* v. *Harris*, *supra*, in which a tank waggon belonging to a limited company was in the possession of Harris under the terms of a hire-purchase agreement at the time that it was being misused, the company owning the waggon, who were wholly free from complicity in the illicit transaction, sought to argue (successfully in the lower court) that the word "may" in the last line of s. 226 gave the justices a discretion as to whether or not they ordered forfeiture.

The Divisional Court pointed out that the discretion conferred by the word "may" in these circumstances was extremely limited. Lord Hewart, C.J., said : "Once it is established that the vehicle does come within that class (*i.e.*, within the provisions of s. 202), it does not appear to me that this undoubtedly rigorous statute gives the

claimant any opportunity for asking the court to take into consideration mitigating circumstances with the effect of removing the vehicle from that class. There is no opportunity for mercy about the vehicle which has been forfeited. There may be, upon the facts, ground for contending that the vehicle does not come within the class of forfeited things."

It may be argued with justice that, as in the *De Keyser* v. *Harris* case, but not in this case, great hardship may be suffered by an entirely innocent party, but, as was pointed out by Humphreys, J., in the *De Keyser* case, s. 209 of the Act contains ample provision for the remission of a forfeiture which has already been decreed by the Commissioners of the Treasury or Customs. That section, which has been repealed and slightly altered in its terms by subsequent legislation, enables the Commissioners of Customs to act in appropriate cases and, as Humphreys, J., said: "The court must assume that the Commissioners of Customs will act reasonably, and without undue hardship, if an application is made to them to remit the forfeiture which the law has imposed upon some vehicle or conveyance."

(The writer is indebted to Mr. W. A. L. Cooper, Clerk to the Preston Justices, for information in regard to this case.) R.L.H.

No. 42.

THE UNLAWFUL SALE OF FOOD ON A SUNDAY

A grocer was summoned to appear last month at Croydon Magistrates' Court to answer a charge that he had failed to comply with s. 47 of the Shops Act, 1950, in that the mixed grocer's and greengrocer's shop at Croydon of which he was the occupier was not closed for the serving of customers on Sunday otherwise than for the purposes of the transactions mentioned in sch. 5 to the Act, contrary to s. 59 of the Act.

For the prosecution, which was initiated by the Corporation, it was stated that as a result of substantial complaints from shopkeepers in the locality, an official patrol was sent out on a Sunday earlier this year and the shop was kept under observation. A number of transactions were seen to take place and a test purchase of a bag of flour, a packet of salt and a jar of jam was made by a Corporation inspector. The sales were made by the defendant's wife.

The defendant, who pleaded guilty and who was stated to have had his attention drawn on two previous occasions to the provisions of the Act, was fined £2 and ordered to pay £2 2*s*. costs.

COMMENT

Section 47 (1) of the Shops Act, 1950, enacts that, with certain exceptions, every shop shall be closed for the serving of customers on Sundays, but there are, however, a surprising number of exceptions to the general rule and these are set out in sch. 5 to the Act. Amongst the transactions which may be carried out in a shop on Sunday are the sale of flowers, fruit and vegetables (other than tinned or bottled fruit or vegetables), aircraft and motor or cycle supplies or accessories, photographs for passports and fodder for horses, mules, ponies or donkeys. It is also permitted to carry on the business of a funeral undertaker on Sundays and s. 56 (4) of the Act permits barbers to carry on their business on that day in any place including their shop if their attendance is necessary by reason of the bodily or mental infirmity of the person requiring their services.

Section 59 of the Act provides that in the case of a first offence under s. 47 the maximum penalty shall be £5 and in the case of a second or subsequent offence £20.

(The writer is indebted to Mr. Oliver A. Milan, Clerk to the Croydon Justices, for information in regard to this case.) R.L.H.

PENALTIES

Croydon—March, 1952—using a stall without a licence issued by the Council (four summonses)—fined £1 on each charge. To pay £2 2*s*. costs.

Oxford—April, 1952—(1) being an uninsured user of a car, (2) being an unlicensed driver—(1) fined £2 10*s*., (2) fined 10*s*.

Oxford—April, 1952—(1) permitting the first offence above, (2) aiding and procuring the second offence above—(1) fined £3, (2) fined 10*s*. Second defendant aged twenty-two permitted first defendant, his eighteen year old brother, to drive a short distance while he remained beside him. The car was not being driven dangerously.

Oxford—April, 1952—failing to ensure the safety of passengers on a bus—fined £2. To pay 16*s*. 6*d*. costs. A sixty-seven year old woman was about to board the bus when the conductor re-started it. She was dragged along the road fracturing an arm and a rib.

Colchester Juvenile Court—April, 1952—hitting the driver of a railway engine in the eye with an apple core—conditional discharge. To pay 7*s*. 6*d*. costs. Defendant, a thirteen year old boy, threw the core at the driver hitting him in the eye as the latter leant out of his cab.

Brighton—April, 1952—speeding in an invalid chair—fined 20*s*. and license endorsed. Maximum permitted speed of defendant's invalid carriage is 20 *m.p.h.* Defendant overtook two cars at 35 *m.p.h.* and another at 41 *m.p.h.*

Hendon—April, 1952—failing to behave in a civil and orderly manner while a conductor on a bus—fined £5. To pay £3 14*s*. 8*d*. costs. Defendant, aged twenty-two, refused to allow a small girl on the bus saying it was full up. A pregnant woman drew his attention to two vacant seats whereupon defendant swore at her, stopped the bus and tried to pull the woman off it. The woman had a miscarriage the following day.

Bristol—April, 1952—selling nylon stockings at an excess price—fined £5. To pay £5 costs and to repay 7*s*. 4*d*. the amount overcharged on two pairs of stockings. Defendant's manageress was fined £1 for aiding and abetting the above offence.

Bristol Quarter Sessions—April, 1952—increasing insolvency by gambling (two charges)—six months' imprisonment. Defendant borrowed £2,000 to buy a house but when shortly afterwards he was asked to return the sum he had only £1,650 left. In an effort to make up the money he lost £300 in gambling on greyhounds at Bristol and a further £1,250 on greyhounds in London. Defendant a Cypriot.

Bristol Quarter Sessions—April, 1952—stealing £498 from a limited company while secretary to the company (five charges)—two years' imprisonment. Defendant, aged forty-two, with an excellent character admitted the offence and asked for twelve similar offences involving £379 to be taken into consideration. Defendant who had a salary of £750 a year was stated to have been generous beyond his means.

A SOCIAL REBEL

A correspondent to *The Times* laments the disappearance from the streets of the old-fashioned Punch and Judy Show—a lament that will be echoed by all lovers of venerable institutions. Whether the rarity of the showman's visits today arises from the increase in traffic and the risk of summonses for obstruction, as the article in *The Times* suggests, or whether his passing is due to some deeper cause, the fact remains that our urban life is very much the poorer for his absence.

With all respect to our great contemporary, we incline to the opinion that Mr. Punch, whose robust defiance of law and order is so marked a feature of his character, is scarcely likely to have been put off by so small a matter as the contravention of street and traffic regulations. Conviction in a court of summary jurisdiction and a fine not exceeding 40*s*. are weak deterrents to a person who begins his career as a family man by throwing the baby out of the window, and proceeds by easy stages to beating his wife to death, committing aggravated assault on and subsequently murdering a policeman and a beadle, hanging the public executioner on his own gallows, and eventually treating the sanctions of religion (in the person of the Devil) with the same contempt as he has exhibited towards the penalties of the secular law. Such inconsistency would be as great an anti-climax as that recorded in the pages of *Ruthless Rhymes*:

> "John put strychnine in Janie's tea;
> Janie died in agony.
> Mother really seemed quite vexed—
> 'Whatever will that boy do next?'"

Some other factor or factors, then, must have driven Mr. Punch and his nefarious activities underground, and it is time the sociologists got down to the roots of the problem. We have searched in vain the works of Cesare Lombroso and of the Italian school of criminologists (who allege that anti-social instincts can be recognized by pathological symptoms) for guidance as to the psychological significance of a hump, a hooked nose and a squeaky voice: we find in the text-books

many cases of ambi-dexterity but no parallel to Mr. Punch's idiosyncrasy of grasping sticks and other offensive weapons between his folded arms instead of in one hand or the other. So far as we know no writer on psycho-pathology has set out to investigate hereditary tendencies in Mr. Punch's family history, his early social environment or his vocational maladjustments—still less attempted to analyse his dreams. So far as this last-mentioned matter is concerned there is the obvious preliminary difficulty of inducing an extraverted type like Mr. Punch to relax sufficiently to permit the application of the treatment, and it is even doubtful (having regard to his somewhat forceful propensities in his waking moments) whether it would be possible to arrive at an effective diagnosis without serious risk to the safety of the practitioner. Psycho-therapy by hypnotic suggestion seems to be ruled out for similar reasons.

The etymologists, of course, have been busy on his ancestry. Some have bestowed upon " Punch and Judy " a remote kinship with " Pontius " (Pilate) and " Judas," but this seems unnecessarily far-fetched. It is generally agreed that Punch originated in Italy as *Pulcinella*, which in turn may be derived, according to taste, from *pollice* (thumb)—a reference to the small stature of the hero, or a diminutive of *pollo* (chicken)—a term of affectionate endearment. As *Pulcinella* he certainly appears in the old Harlequin-comedy, and in this character he can be traced back at least to the early days of the seventeenth century; he enters France as *Polichinelle*, in the days of Louis XIV, and in England at the time of the Restoration. From that date his activities have been widespread, and his public appearances continuous, until very recent times.

There is no outward evidence that current opinion—least of all among the youth—has been shocked by the lawlessness for which Mr. Punch has become notorious, or that such opinion is outraged by his success in confuting the convention that " crime does not pay." In an age when children, so to speak, imbibe petty gangsterism with their mother's milk, and are weaned upon illustrated " comics " and strip-cartoons of anti-social content; when crime-novels and illustrated Sunday newspapers form the staple literary food of nine-tenths of the population, far stronger meat than the sordid melodrama of Punch and Judy is regularly purveyed to young and old alike; and most of them (in the current phrase) can " take it " without any risk of having their stomachs turned thereby.

Part of the truth appears to be that Mr. Punch's blood-curdling adventures have lost their power to curdle the blood of the spectator precisely because their enactment has been transferred from the stage of fantasy to the auditorium of everyday life. In the law-abiding Victorian and Edwardian days, when little boys and girls were nurtured on the picture-book morality of Dean Farrar, Charles Kingsley and Louisa M. Alcott, and on periodicals saturated with the ethical and religious outlook of *Eric, or Little by Little*, the cruel and vicious propensities inherent in child-nature sought in the world of the imagination the outlet which they were denied in everyday life. Earlier in the century Emily Brontë had reacted against the drab humdrum existence of the Haworth Parsonage by inventing the evil characters and experiencing in imagination the brutal passions of *Wuthering Heights*; those who lacked her creative genius glutted themselves with the horrific and frequently morbid elements in the stories of H. J. Andersen and the Brothers Grimm. Farther back still, in the polite days of the late eighteenth century, carefully nurtured young ladies—to whom in real life nothing exciting ever happened—scanned surreptitiously and with a delicious sensation of terror Horace Walpole's *Castle of Otranto* and Ann Radcliffe's *Mysteries of Udolpho*, packed with scenes of neo-Gothic horror which seem crude and laughable to us today only because we have become inured to far worse things in real life. The " raw head and bloody bones " of these Georgian " shockers," and even the dreadful mysteries of Edgar Allan Poe, mean little to a generation which has been treated to eye-witness accounts of Belsen and Hiroshima, and which, in some quarters, still regards sadistic brutality as a commonplace.

There is, however, another and more profound reason for the suppression of Mr. Punch. We live in an era of mediocrity; our public figures—politicians, artists, dramatists and novelists—produce little that is more than second-rate. In Parliament and the organs of government, in the press, in industry and in the schools, mediocrity is worshipped and exalted; everybody's aim in life is to be just like everybody else. People are content to be spoon-fed with the sops that a maternal, fussy government provides; tied to her apron-strings, they are sinking into a passive, bovine apathy, under the ignoble slogan " I couldn't care less ! "

Since all this means that enterprise and individuality are frowned upon and sternly suppressed, it is small wonder that the powers that be should hate and fear the unconventional, independent vigour of Mr. Punch's character. For, regarded from their standpoint, he is the very antithesis of the type to which they want us all to conform. Try to imagine him, for instance, waiting in the queue for the one-and-ninepennies at the pictures, making a return of his income for the Inland Revenue, showing a respectful humility to his butcher, or filling up football-pool coupons in the bosom of his family ! The very idea is absurd. No, depend upon it, some sinister influence from Whitehall has been at work to dethrone from our affections one who represents the individualist *par excellence*, the rebel against *bourgeois* degeneracy, the daemonic personality that takes his own, independent line and really gets things done.

A.L.P.

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She is not seeking charity. We enable her to overcome her disability by training her to make artificial flowers. For this she receives official standard wages, which enable her to contribute towards her keep. The heavy cost of maintaining the home and workshops, however, is more than can be provided for by our crippled women.

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PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Larceny—Restitution or compensation—Whether charge "taken into consideration" can be included.*

A person is charged with theft or embezzlement of £50 and asks for the theft or embezzlement of £10 to be taken into consideration by the court. Can the court make an order for restitution of £50, the amount in the charge, or can it make an order for £60, dealing with the amount concerned in the offence which is being taken into consideration? SETE.

Answer.

If the question refers to an order of restitution of the property stolen, under s. 45 of the Larceny Act, 1916, it seems clear that only the sum mentioned in the actual charge can be the subject of the order, since the section makes the order for restitution depend upon prosecution to conviction. When a charge is "taken into consideration" there is no conviction, *R.* v. *Nicholson* (1948) 32 Cr. App. Rep. 98, 127.

If, however, what is meant in the question is an order for compensation for loss, under s. 11 (2) of the Criminal Justice Act, 1948, such order is dependent upon an order of absolute or conditional discharge or a probation order. This also depends upon a conviction, and in our opinion the order cannot deal with a sum in respect of which there has been no conviction. If it is desired that there should be an order in respect of the £10 the simplest way is to prefer the charge instead of having it merely taken into consideration.

2.—Highway—*Miners' coal—Refuse on the highway.*

It is the practice for miners' coal to be deposited in the highway before removal on to adjoining premises. In many instances the coal is collected, but a quantity of slag is left heaped up against the kerb. The parish council have asked the rural district council to ensure that these slag heaps are removed. In my view, these slag heaps are not "house refuse" within the meaning of s. 72 of the Public Health Act, 1936. It will be observed that although there is no definition of the term in that section there is mention of the removal of house refuse from premises, and, in the nature of things, to call slag left in these circumstances "house refuse" is a misnomer, if it does not arise from a house. I am not unmindful of the fact that, if it is considered that slag can in these circumstances be house refuse, my council have power to make byelaws regulating the deposit of refuse in bins. FON.

Answer.

We do not think this practice can be dealt with by the local authority as if the slag were "house refuse" within the Public Health Act, 1936. This is, we infer, the "allowance coal" which forms part of the miner's remuneration. We are not told who delivers it, *i.e.*, servants of the colliery (as is or used to be the practice in some areas) or an agent of the miner. In either event the carriers are, we think, guilty of an offence under s. 72 of the Highways Act, 1835, of laying rubbish or other matter on the highway, if injury, interruption, or personal danger can be established: *vide* the words italicized in *Stone*. While the dumping of the coal itself in the road may not amount to this, the dumping of "slag," and leaving it there, may do so. If the carrier is an agent of the miner, he himself may be guilty of this offence, both in respect of causing the "rubbish or matter" to be placed there, and by reason of leaving it there when he takes the coal indoors. Section 73 of the same Act enables removal of matters laid on or near the highway so as to be a nuisance, after due notice, and provides for recovery of the expenses of removal from the person who is responsible for depositing them on the highway.

3.—Husband and Wife—*Separation order on ground of persistent cruelty—Subsequent divorce proceedings—Order now thought to have been wrongly granted.*

On August 9, 1948, A applied to a magistrates' court for an order against her husband, B. A summons was issued for persistent cruelty and neglect to maintain. An order was made on the ground of persistent cruelty and this contained a non-cohabitation clause. A now wishes to take divorce proceedings on the ground of cruelty. The solicitors for A, having obtained notes of evidence of the hearing on August 9, 1948, do not agree that any cruelty was shown. Upon examination of the facts as supplied by A to them, their opinion is confirmed that there was no cruelty, but only a suspicion of adultery. Upon instructions, counsel agrees with the solicitors for A and is at a loss to understand why cruelty was found. There is no proof of adultery against B. The fact that there is a non-cohabitation clause in the order precludes grounds of desertion.

Is there any action which can be taken to (i) upset the order on behalf of A or (ii) strike out the non-cohabitation clause?

There is no doubt that B is failing to pay under the order and is avoiding proceedings to enforce the order. TIMON.

Answer.

Under s. 7 of the Matrimonial Causes Act, 1950, the order could be used in the divorce proceedings as proof of cruelty, but apparently would be considered useless in all the circumstances of the present case.

(i) The order is presumably good on the face of it, and the normal time for appeal is long past, but by r. 71 (5) of the Matrimonial Causes Rules, 1950, the Divisional Court has power to extend the time. However there would still be the difficulty that B might not wish to appeal and A could hardly do so.

(ii) This might be done by a variation of the original order under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, or s. 30 (3) of the Criminal Justice Administration Act, 1914, but the variation, not being due to a clerical error or mistake of that kind, would not be retrospective.

4.—Husband and Wife—*Summary Jurisdiction (Married Women) Act—Complaint by wife of constructive desertion—Persistent cruelty and habitual drunkenness—Summonses dismissed—Wife homeless—Cared for by county council under National Assistance Act, 1948—Complaint by council for maintenance of wife by husband.*

Mrs. Y left her husband and the matrimonial home, after domestic difficulties, and took her three children with her. Being homeless, she was cared for by the county council as the welfare authority and lodged in one of their homes with her children. She consulted a solicitor and caused summonses to be issued against her husband on the grounds of: (*a*) his desertion (constructive), (*b*) his persistent cruelty towards her and (*c*) that he was an habitual drunkard as defined by the Act of 1879 as amended, and asked for (1) the custody of the three children, (2) maintenance in respect of herself and the three children and (3) that she be no longer bound to cohabit with her husband. She simultaneously caused summonses to be issued against her husband under the Guardianship of Infants Acts asking for the custody of the three children and maintenance in respect of them.

On the hearing of all the summonses, at which both parties were legally represented, the court decided that the husband, who expressed himself willing to have his wife back, had not been guilty of either desertion or persistent cruelty or that he was a habitual drunkard; and accordingly dismissed the summonses; but they found that the wife's case for custody of the children under the Guardianship of Infants Acts succeeded and granted her the custody of them and ordered the husband to pay 30*s.* per week for the maintenance of each of them until they should attain the age of sixteen years. Subsequently, the county council, as the welfare authority, caused a summons to be issued against the husband that he was a person liable to make contributions in respect of his wife, who had been provided with accommodation under Part III of the National Assistance Act, 1948.

At the hearing, the county council drew the attention of the court to s. 42 of the Act, that "for the purposes of this Act (*a*) a man shall be liable to maintain his wife and his children," and as the wife was homeless and had been provided with accommodation by them as welfare authority, the husband should be required to contribute to her maintenance and asked for an order of 21*s.* per week the standard charge.

The court found they were in a quandary, having previously found that the husband had not been guilty of desertion, persistent cruelty or drunkenness; and thus that he was under no obligation to pay maintenance to his wife. They were being asked that they should make an order for him to pay the county council for his wife's maintenance.

However, they found that the county council, as the welfare authority had provided the wife with accommodation as a homeless person, and, under s. 42 of the National Assistance Act, the husband being liable to maintain his wife, they had no alternative but to make an order, and on proof of the husband's means, made an order that he should pay the county council 21*s.* per week for his wife's maintenance.

The court could find no authority to refuse to make an order on the husband to pay the county council for his wife's maintenance, on their case being proved that they were providing the wife with accommodation, in spite of the fact that they had previously found the wife had

no justification for leaving the matrimonial home, thus rendering herself homeless; but they appreciated that the county council appeared to have no power, either to force the wife to return to her husband or, as welfare authority, to turn her out of their home until they had found her other accommodation.

Do you agree that this was the only course open to the court in the anomalous position in which they were placed? S. CEDRIC.

Answer.

In our opinion the statutory liability to maintain a wife, like the common law liability, is not absolute. It can, for example, be extinguished by adultery, and, we think, suspended by the wife's refusal without cause to live with her husband. *Jones* v. *Newtown and Llanidloes Guardians* (1920) 84 J.P. 237. If the justices, on hearing the evidence in the case brought by the local authority, found that the husband was willing to make a common home and maintain his wife, and that she refused unreasonably, we consider that no order should have been made upon the husband. We admit that this leaves the local authority in a difficult position, but we think it is the legal position.

5.—Licensing—*Application for new licence—Newspaper advertisement inserted on date fixed by licensing justices—Error in advertisemrent—Corrected by subsequent advertisement—Effect.*

Application is being made to the general annual licensing meeting on February 4 next, for an off-licence and notices have been served and published as required by s. 15 of the Licensing (Consolidation) Act, 1910. The justices have directed that notice of the application shall be advertised in a newspaper on January 12 and 19. It has been observed that the notice appearing in the newspaper on January 12 contains an error on the part of the printer and gives the date of the general annual licensing meeting as February 14. The correct notice will appear in the newspaper on January 19 and thus will be in compliance with the requirement of the first part of s. 15 (1) (*a*) but will not comply with the requirement of the second part that the notice shall be advertised on such day or days as may be fixed by the licensing justices. Can the licensing justices waive the requirement that the notice be advertised on January 12 and hear this application on February 4 or must the applicant serve fresh notices for the adjourned meeting? OMAR.

Answer.

It is not usual nowadays for licensing justices to fix the dates on which advertisements of notices of application shall appear—this requires a degree of co-operation by newspaper publishers which, in these difficult days, is not always forthcoming.

If, in the case under review, no dates had been fixed, we would be in no doubt that the corrected notice would have repaired the error in the previous notice sufficiently: and even though dates were fixed, we incline to think that it is reasonable for the error to be overlooked.

But we have doubts in the matter, particularly as it seems that the High Court construes the provisions of s. 15 of the Licensing (Consolidation) Act, 1910, very strictly (*see, e.g.*, the remark of Lord Goddard, C.J., in the recent case of *R.* v. *Poole Licensing JJ., ex parte Miller* (1951) 115 J.P. at p. 452) "Unfortunately, there was a mistake in complying with the notices. It was a mistake of the most technical description, and it is very regrettable that one has to give effect to such a mistake"). Thus, we think that abundance of caution would be satisfied, and nobody injured, if fresh notices were served and advertised and the application heard at the adjourned general annual licensing meeting.

[This query was answered by post in January.—*Ed., J.P. and L.G.R.*]

6.—Licensing—*Enlarged permitted hours under order made under s. 1 of Licensing Act, 1921.*

Two years ago my bench made an order under the Licensing Act, 1921, that eight and a half hours should be substituted instead of eight hours to suit the special requirements of licensees in this district and this order was made after the usual advertisements were put in the paper and the bench said this would be for a trial period of one year.

Last year an application was again made for the summer-time extension and further advertisements were put in the press. Again, this year, the licensees have made application for the renewal of this order and I shall be glad to know whether this can be treated as a renewal or whether the bench have to advertise the application in the local press. I feel that this is an unnecessary expense to put on the county each year.

I cannot find anything in the Act which states that this application has to be treated as an annual application. It would appear that once the magistrates have made the order it can be renewed each year. N. DEE.

Answer.

In our opinion, proviso (*b*) to s. 1 of the Licensing Act, 1921, empowers the licensing justices to make an order having permanent effect and annual renewal is not contemplated by the Act. The necessity for further advertisement only arises where the licensing justices are considering a variation of the order. We think that an order "for a trial period of one year" is an expression of an intention to keep the matter "fluid" against the possibility of a variation being considered in the following year.

7.—Licensing—*Pantechnicon as licensed premises—"Mobile bar."*

We refer to P.P. 5 at p. 253, *ante*.

Your answer does not refer to any specific statutory provisions in the matter, and we shall be glad to know if we correctly assume that the position is controlled by the general prohibitions to be found in the Finance Acts which have the effect of prohibiting sale of intoxicating liquor except under licence. NNN.

Answer.

A mobile bar such as our correspondent describes is not within the "Exemptions and savings" provisions of s. 111 of the Licensing (Consolidation) Act, 1910. Therefore, intoxicating liquor may not be sold unless there is in force a justices' licence authorizing the holding of an excise licence (*ibid.*, s. 65). This licence may only be granted on application, notice of which must be given by reference to the "premises," and plans of the "premises" deposited (*ibid.*, s. 15). Certain "premises" are not qualified to be licensed premises (*ibid.*, s. 37) and the annual value provisions (*ibid.*, ss. 38 and 39) will apply; it is difficult to reconcile these provisions with a mobile pantechnicon.

But if a licence is granted in respect of the pantechnicon, the pantechnicon will be "licensed premises" within the meaning of the Licensing Act, 1921 (*see* s. 18 thereof) and, therefore, whether it is moving or parked, the "permitted hours" as fixed by the licensing justices under s. 1 of that Act will apply to it.

8.—Licensing—*Publican's licence granted subject to surrender of beer-house licence—Inability to perform conditions—Whether grant may be abandoned and application made for new grant without conditions.*

The Dash Inn holds a beer on-licence. Consent to alterations to the premises was obtained at the brewster sessions, 1951. At the adjourned sessions, 1951, the licensing justices granted a publican's licence in respect of the same premises subject to payment of monopoly value on taking out first excise licence and to the carrying out of the alterations to provide a central servery and better lavatory accommodation, for which consent had been obtained as above. Although it

No amount of welfare legislation can ever completely solve the problem of children hurt by ill-treatment or neglect. There must be an independent, experienced organisation whose trained workers can protect those who cannot defend themselves—and who give the patient advice and assistance so often needed to rebuild the family life. The National Society for the Prevention of Cruelty to Children depends on voluntary contributions to continue this work. No surer way could be found of helping the helpless, and bringing happiness to those who need it most.

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was found before the date of confirmation that the appropriate authority would not grant a licence to carry out the alterations on the grounds that they were "not essential," the confirming authority nevertheless confirmed the licence subject to the conditions, having refused to refer it back to the licensing justices for consideration as to removal of the conditions.

I have now been asked whether an application could be made at the adjourned brewster sessions, 1952, for a new publican's licence without the conditions. I am of opinion such an application can be made for the following reasons :

(1) As the first excise licence under the publican's licence has not been taken out, owing to the alterations not being carried out, the beer on-licence has not been surrendered (s. 73 (1), Finance Act, 1947), and is still operative.

(2) The publican's licence granted and confirmed in 1951 can be surrendered before fresh application is made.

(3) This surrender can be made to the licensing justices at the brewster sessions, 1952, and accepted by them.

(4) Such a surrender would involve no financial loss as regards monopoly value as it is not payable unless and until the first excise licence is taken out.

(5) Such a surrender would not necessitate the closing of the premises for the sale of beer (*see* (1) above).

(6) *R.* v. *Amendt* : *R.* v. *Taylor* (1915) 79 J.P. 332 would not apply as at the time of the application there would not be a similar licence in existence.

(7) If such a surrender is not made the publican's licence and/or the beer on-licence must be renewed annually or either or both will lapse.

I should be glad of your views on the above and your comments generally on this matter. NEEK.

Answer.

We see no reason why the publican's licence granted at brewster sessions, 1951, and subsequently confirmed, but which has not become operative, should not now be abandoned because of the practical difficulties, beyond the licence holder's control, of giving effect to the conditions. A new licence may then be applied for. We suggest that the new licence, if granted, shall be subject to a condition that immediately after confirmation the grant of 1951 shall be abandoned. We do not think that the cases of *R.* v. *Taylor* : *R.* v. *Amendt* (1915) 79 J.P. 332, prevent this being done, for the reason that no publican's licence is in force in respect of the premises and that the condition precedent to such licence coming into force will not be fulfilled. If the application for a new grant is not successful, the beerhouse licence must be renewed annually until an excise licence is granted in pursuance of the publican's licence. This will be at some future time when the conditions are complied with. In our opinion, it is unnecessary to seek annual renewal of the inoperative grant of the new publican's licence.

9.—Licensing—*Licence-holder abroad—Licensed business carried on by wife.*

We act for a client who holds a conditional licence in respect of an hotel in this town. He went abroad in the summer of last year and expects to return in the early part of the coming summer. His wife is now managing the premises on his behalf but of course the licence is still in his name.

We shall be glad of your opinion as to whether there is anything wrongful in his remaining abroad whilst the holder of the licence and whether any steps should be taken under the circumstances of this case to meet the objections (if any). NENE.

Answer.

The question does not suggest that the licence-holder has ceased to be responsible for the business so as to produce the situation that his wife is herself selling intoxicating liquor without a licence, such as would be the case if he had deserted her and abandoned the business to her.

There is nothing "wrongful" about a licence-holder going abroad for a period unless the justices so think it against the interests of good licensing administration, having regard to all the circumstances.

That it is no longer a requirement of the law that the licence-holder shall be the "real resident holder and occupier" of the premises (*vide* Beerhouse Act, 1840, s. 1) has been well settled since *Leeds Corporation* v. *Ryder* (1907) 71 J.P. 485, and (as to beerhouses) by the Finance Act, 1910, s. 2. But he may be criminally responsible for offences occurring on the premises in his absence (*see Linnett* v. *Metropolitan Police Commissioner* (1946) 110 J.P. 153).

It really is a matter of degree. A licence-holder, we presume, will occasionally take a holiday and leave his business to be carried on by his agent. There comes a point, of course, at which licensing justices are entitled to regard the duration of the absence as unreasonable and may suggest that the licence shall be transferred to someone within easier reach.

10.—Road Traffic Acts—*Notice of intended prosecution—S.* 21 (*c*) 1930 *Act—Computation of the period of fourteen days.*

I shall be glad to have your opinion together with the relevant authority regarding the manner in which the time limit of fourteen days specified in s. 21 of the Road Traffic Act, 1930, should be computed.

The facts of the case in question were as follows :

(1) On January 21, 1952, a road accident occurred in which A knocked down a pedal cyclist. The cyclist was a Polish gentleman and A took him to his place of work but did not give him his name and address.

(2) The following day, January 22, 1952, within the twenty-four hours stipulated by s. 22 (2), A duly reported the accident to the police.

(3) A heard nothing further until February 5, 1952, when he was served personally with notice of an intended prosecution under s. 21 (*c*).

If the day of the commission of the offence is included in the fourteen days the notice of intended prosecution was served out of time and I shall be glad to have your advice on the computation of this statutory time limit in general and in particular with reference to the facts of this specific case. JIP.

Answer.

The day of the offence must be excluded from the calculation (*Stewart* v. *Chapman* [1951] 2 All E.R. 613).

This accident (and presumably, therefore, the offence) occurred on January 21. Excluding that day the fourteen days within which notice must be served expired on February 4. A notice served on February 5 is out of time.

11.—Water Act, 1945—*Vesting of communication pipes—Supply under Public Health Acts.*

I would refer you to your P.P. 11 at 115 J.P.N. 398. A similar case arises in this town, but the local authority (who are the water undertakers) argue they have not adopted the above Act. Is this argument sound ? DEE.

Answer.

We infer that there is no local Act to complicate the position. If the council supply by virtue of the Public Health Act, 1936, s. 44 in Part X of sch. 3 to the Act of 1945 is put in force, without any "adoption," by the new s. 120 inserted in the Act of 1936 by sch. 4 to the Act of 1945.

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NATIONAL ASSOCIATION OF JUSTICES' CLERKS' ASSISTANTS

THE Fourteenth Annual General Meeting of the Association will be held at the Shaftesbury Hotel, Monmouth Street, London, W.C.2, on Saturday, the 17th day of May, 1952, at 2 o'clock in the afternoon.

ALEXANDER BRIMELOW,
Honorary Secretary.

The Guildhall,
Doncaster.

BOROUGH OF HARROGATE

Appointment of Town Clerk

APPLICATIONS are invited from solicitors with wide municipal experience for the appointment of Town Clerk. The salary is to be £1,500 per annum, rising by annual increments of £50 to a maximum of £1,750 per annum.

The recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks as to Salaries and Service Conditions will apply to the appointment which will also be subject to the provisions of the Local Government Superannuation Act, 1937, and to termination by three months' notice in writing on either side. The successful candidate will be required to pass a medical examination.

Applications, endorsed "Town Clerkship," giving particulars of age, qualifications and experience, with the names and addresses of three referees, must reach me within fourteen days of the publication of this advertisement.

Applicants must state whether, to their knowledge, they are related to any member or senior officer of the Council.

CYRIL WILSON,
Deputy Town Clerk.

Municipal Offices,
Harrogate.
May 6, 1952.

SURREY COUNTY COUNCIL

Two Assistant Solicitors

APPLICATIONS are invited for the following appointments :—

1. Assistant Solicitor, £1,100 × £100 — £1,400 per annum.

2. Assistant Solicitor, A.P.T. Grade X, £870 — £1,000 per annum, plus London Allowance.

The person appointed will assist in the conveyancing, advocacy and general legal work in my department, and must possess advocacy experience and a sound knowledge of conveyancing. Some administrative experience is also desirable in the case of the more senior appointment.

The appointments will be subject to the provisions of the Local Government Superannuation Act, 1937, the general conditions of service of the Council, and the passing of a medical examination. Applications, stating age, full details of experience, present salary and the names and addresses of three referees, must reach me not later than May 30, 1952.

W. W. RUFF,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

COUNTY BOROUGH OF WIGAN

Senior Assistant Solicitor

APPLICATIONS are invited for the position of Senior Assistant Solicitor in the Town Clerk's Department.

Salary in accordance with Grade VIII of the A.P.T. Division of the National Scales (£735 to £810 per annum).

Applications, accompanied by copies of three recent testimonials, should be delivered to me not later than Wednesday, May 21, 1952.

ALLAN ROYLE,
Town Clerk.

Town Clerk's Office,
Municipal Buildings,
Wigan.
May 2, 1952.

Amended Notice

CITY OF WAKEFIELD

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above appointment.

Applicants should have had extensive experience of the duties of an assistant to a justices' clerk, including the typewriting of depositions and be capable of acting as clerk of the court when required. The salary will be equivalent to Grade A.P.T. V of the N.J.C. Scales (£570—£620 per annum).

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age and particulars of experience, with names and addresses of three persons to whom reference may be made, and endorsed "First Assistant" should reach the undersigned not later than May 14, 1952.

RALPH SWEETING,
Clerk to the Justices.

Magistrates' Clerk's Office,
Town Hall,
Wakefield.

ESSEX PROBATION AREA

Appointment of Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer.

Applicants must not be less than 23, nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than fourteen days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
May 2, 1952.

METROPOLITAN BOROUGH OF PADDINGTON

Assistant Solicitor (A.P.T. IX : £820 × £40—£940 incl.)

THE Council invite applications for this appointment which is subject to N.J.C. conditions, the Council's Superannuation Acts and one month's notice on either side. Commencing salary according to experience and qualifications. A sound knowledge and experience in advocacy, conveyancing and general legal work (including the preparation of contracts and agreements) is essential.

Applications, stating (*a*) age, (*b*) professional and academic qualifications and date of admission, (*c*) present and past appointments and salaries, (*d*) experience, and (*e*) names of three referees, should be sent to me by May 22, 1952.

W. H. BENTLEY,
Town Clerk.

Town Hall,
Paddington, W.2.
May 2, 1952.

CITY OF BIRMINGHAM

Assistant Town Clerk

APPLICATIONS are invited for appointment as Assistant Town Clerk of Birmingham, the present holder of the post now offered having been appointed to an important office in another large city.

The successful applicant will be entrusted with considerable responsibility for a wide range of legal and administrative work in the Town Clerk's Department. Applicants must therefore be solicitors having extensive experience of local government law and administration and a wide general interest in local government affairs.

Salary £1,750 × £100—£2,150. Pension scheme, medical examination. Applications, with copies of three recent testimonials to Town Clerk, Council House, Birmingham, by May 28, 1952. Canvassing disqualifies.

HAMPSHIRE COMBINED PROBATION AREA

Appointment of Full-Time Male Probation Officers

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of two full-time Male Probation Officers for the above area. Candidates must be not less than 23 nor more than 40 years of age (except in the case of serving officers).

The appointments and salaries will be in accordance with the Probation Rules and the salaries will be subject to superannuation deductions.

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the undersigned not later than May 26, 1952. Canvassing, either directly or indirectly, will be a disqualification.

G. A. WHEATLEY,
Clerk to the Probation Committee.

The Castle,
Winchester.
May 5, 1952.

BOROUGH OF SCARBOROUGH

Appointment of Assistant Solicitor

APPLICATIONS are invited from solicitors for the appointment of Assistant Solicitor. Salary A.P.T. VA (£600-£660). Previous local government experience will be an advantage.

The appointment is subject to the Local Government Superannuation Act, 1937, and to medical examination, and terminable by one month's notice.

Applications, stating age, education and experience, together with copies of two recent testimonials, and endorsed "Assistant Solicitor" must reach me not later than May 21, 1952.

E. HORSFALL TURNER,
Town Clerk.

Town Hall,
Scarborough.
May 7, 1952.

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EAST NORFOLK PROBATION AREA

Appointment of Whole-time Probation Officers

THE East Norfolk Probation Area Committee invites applications for the appointment of a male probation officer and of a female probation officer, to be stationed at East Dereham and Norwich respectively. The service of each officer will be assigned to several county petty sessional divisions and the persons appointed will each be required to provide a motor car for use in connexion with their duties for which use travelling allowances in accordance with the Scheme of the National Joint Council for Local Authorities' A.P.T. and Clerical Services will be payable.

The appointments, and salaries payable, will be in accordance with the Probation Rules and the selected candidates will be required to pass a medical examination and to act under the supervision and direction of the senior probation officer for the area.

Applications, stating age, qualifications and experience, together with the names and addresses of two persons to whom reference can be made, should be received by the undersigned not later than May 24, 1952.

H. OSWALD BROWN,
Secretary to the East Norfolk
Probation Area Committee.

County Offices,
Thorpe Road,
Norwich.

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Appointment of (1) Deputy Clerk
(2) Assistant Solicitor

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(1) *Deputy Clerk*. Salary £1,250 to £1,500 according to experience and qualifications
(2) *Assistant Solicitor*. Salary in Grade VIII of the A.P. & T. Division of the National Conditions, according to experience and qualifications.

Candidates for Deputy Clerk should have local government experience.

Applications, stating age, qualifications, experience and present appointment, salary and notice required, together with the names of two persons to whom reference may be made, must reach the Clerk of the Board, Elmhurst, Brooklands Avenue, Cambridge, by May 17, 1952.

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